

UNIVERSITY
OF CALIFORNIA
LOS ANGELES

SCHOOL OF LAW
LIBRARY

AUSTRIA 1092

Catalogue Rue 7e

Frampton (1952) (1927 ed.)

Digitized by the Internet Archive
in 2007 with funding from
Microsoft Corporation

http://www.archive.org/details/shotsfromlawyers00everiala

SHOTS FROM A LAWYER'S GUN





The Judges of the Court for Crown Cases Reserved hearing the Appeal in the Elsenham Game Egg Case (*see* Appendix).

Shots from a Lawyer's Gun

BY

NICHOLAS EVERITT, F.Z.S.
(H. R. E.)

HONORARY SECRETARY TO
THE FIELD SPORTS AND GAME GUILD.

Author of "Broadland Sport," "Told at Twilight," "How to Win an Election," etc., etc.

FIFTH EDITION, ENLARGED, WITH
TABLE OF STATUTES; LIST OF CASES;
AND CHAPTERS ON NEW SUBJECTS.

ILLUSTRATED BY WALLACE MACKAY
(Contributor to "Punch")
AND OTHER ARTISTS.

"Nothing is certain in Law except the expense."

London:
EVERETT & CO.,
ESSEX STREET, STRAND, W.C.
1910.

(All Rights Reserved.)

T
Ev 2727s
1910

First Edition . . . . . *printed April, 1900.*
Second Edition . . . . *printed April, 1901.*
Third Edition . . . . . *printed May, 1902.*
Fourth Edition . . . *printed August, 1903.*
Fifth Edition . . . . . *printed April, 1910.*

337826
12-1-66
cfb

Jan 1967

A SIGHTING-SHOT OR PREFACE TO THE FIRST EDITION.

This little work is dedicated to the English Sportsman and his Gamekeeper. Like most other books, it is published with the primary object of gain to the Author (in the shape of royalties), but whilst keeping this very laudable end in view the Author has not failed to recognize that the co-operation of his readers is essential to achieve a satisfactory result. To obtain such co-operation he must present to them something interesting or instructive, and, if possible, fulfilling both these qualifications.

An elucidation of the points of law that are discussed alike at the Hall and the Keeper's Cottage must necessarily be instructive; whether it be interesting depends upon the way in which it is presented to the reader, and at once arises the question, "Is it possible to ever make law interesting to the layman?" The Author fondly believes it is: hence the present booklet, in the writing of which he has drawn extensively upon the memory of a certain wily old sporting solicitor who,

in days gone by, was known as the "Poacher's Lawyer," and whose personality has in the following pages been for the nonce merged in that of the Author under the sobriquet of "Mr. Six-and-Eight," from the storehouse of whose inexhaustible memory many an amusing incident has been culled; in the recounting of which the Author has endeavoured to preserve the original humour, whilst not forgetting to point the (legal) moral of the tale.

Thus on its merits (if it has any) as an interesting exposition of the law particularly appertaining to Sportsmen it must stand or fall, and to the kindly consideration of his brethren of the gun or gown it is commended by the writer.

NICHOLAS EVERITT.

NORWICH, *April*, 1901.

PREFACE TO THE FOURTH EDITION.

A WIDE and varied experience of poachers and poaching, game-preserving and game cases, long ago opened my eyes to the confused and unsatisfactory state of our Game Laws.

Many times, both inside and outside the Courts, I have sorely felt the want of a book dealing more particularly with the involved and dubious points of law so carefully avoided in the usual text-books; but that ever I should attempt to undertake so laborious a task seemed to me absurd. Yet it came to pass that some time in 1897-8 I was induced to prepare a series of short articles upon the Game Laws of the United Kingdom. Their instantaneous popularity and success so surprised me that I hesitatingly took another step, and revised and added to them so as to make them more suitable for publication in book form.

On submitting the manuscript to legal publishers I was courteously informed that, although they liked the book, it was much too frivolous for lawyers and at the same time too serious for laymen, and in their

opinion would not find a sufficient sale to justify its publication.

My present publishers, however, thought otherwise, and I am more than gratified, for their sake, that their confidence has not been misplaced.

It is probably owing to the kindness of my reviewers, who have exceptionally flattered me, that the sale has been so large, for the First Edition was exhausted within a few months of publication, and the book has been out of print for some time.

When the book was first published certain absurdities of the Game Laws were exposed, several of the more glaring of them being made marks of special attention. Immediately afterwards some members of the House of Commons communicated with me, and on the 22nd of January, 1902, a short Bill became law (see page 269). Whether this Act was the outcome of the book, or whether it was introduced by reason of other means, I know not. But this I know: there is much room left for improvement in our Game Laws, and if an Act were passed consolidating the Law to date and rectifying the inaccuracies of a past generation, I should at least feel that my little missive to the sporting world had not been launched in vain.

At the request of my publishers I have now written several new chapters dealing with the Sportsman and

his Horse, the Rating of Sporting Rights, and other subjects; whilst in revising and correcting this edition I have attempted to satisfy the express wishes of my legal friends by adding a Table of Statutes, a Table of Cases, and an Index. I have, to gratify my lay friends, arranged for the chief characters in the book to be illustrated.

I am curious to learn the result of this new departure in legal circles, for up to the present no such text-book has suffered the indignities of a scoffing artist, nor has any serious legal work before been so adorned or illustrated.

In placing this New Edition before the public I can only say that if I have scoffed at the absurdities of the Game Laws I still pray for their early revision; whilst I should be the last to ridicule the dignity of a profession of which I am still an active member.

THE AUTHOR.

NORWICH, *August*, 1903.

PREFACE TO THE FIFTH EDITION.

It is pleasant indeed to be able to again thank my reading public, especially my reviewing critics, for the amount of interest and extreme kindness and assistance I have received at their hands.

I feel that the "increasing popularity of this unique work" (I borrow the words some of my reviewers have used) is in reality due to their sympathetic treatment, enthusiastic support, and more than kind recommendation.

It is gratifying to hear of this book (which was certainly not originally intended to aspire to the dignity of a text book) being referred to in different Courts in game cases; to find that it receives serious consideration and favour at the hands of the legal profession, including Judges, Members of the Bar, Magistrates' Clerks and local Advocates, and to know that a special copy has also been requested for the Royal Library at Sandringham.

Although the first edition jumped into popular favour with the laity, the legal profession held aloof for some time, and legal journals almost scorned to mention

its advent. Four years later legal reviewers were recommending it as "an admirable resumé of the Game Laws," "a most useful book," and as "a ready book of reference" to the profession generally.

I have to thank the Editor of the *Daily Mirror* for permission to reproduce the illustration forming the frontispiece, and the Editor of *Pearson's Magazine* for permission to use the illustrations facing pages 111, 169, 173 and 182.

I express deep gratitude to my readers generally, and in particular to Doctor E. I. Watson (my partner in practice), who has rendered so much assistance in the more serious parts of this work. I would add that if I had struggled along upon my own poor resources, unaided by his learning and research, the success of the venture would have been poor indeed.

THE VERY GRATEFUL AUTHOR.

NORWICH, *April*, 1910.

CHARACTERS INTRODUCED

MR. SIX-AND-EIGHT, - - - - - - A Sporting Lawyer.

MR. LEGALLING, - - - Articled Clerk to Mr. Six-and-Eight.

MR. SPOUTER, — A Leading Junior.
MR. BUSTLER, — A Rising Junior.
MR. NEWCALD, — A Young Junior.
MR. SOFTSAP, — A Very Young Junior.
(Barristers.)

MR. GIMBLET, - - - - A Solicitor (ex-Lawyer's Clerk).

MR. ERUDITE, The Solicitor to whom Mr. Six-and-Eight was articled.

P.C. IRONGRIP - - - - - - - Of Deepdale Village.

SQUIRE BROADACRES, J.P., - - - - - Of Deepdale Manor.

MR. SHARPSITE, - - - Head Keeper to Squire Broadacres.

PETER HAWK, WILLIAM FALCON, - - Game Watchers under Mr. Sharpsite.

JACK FUNNYBONE, - - - Nephew to Squire Broadacres; A Medical Student of Bart.'s.

SIR JOHN ROCKETTER, Bt., J.P., - - - - Of Sedgemere Hall.

PATRICK O'LEARY, - Sir John Rocketter's Irish Gamekeeper.

LORD SEAVIEW, - - - - Lord of the Manor of Saltwold.

MR. SPIDER, - - - - - - - Lord Seaview's Watcher.

MR. UPPERTON, J.P., - - - - An Egotistical "Know All."

MR. CARROTS, - - A Retired Greengrocer and Landowner.

MR. STINGIMAN, - - - Tenant Farmer under Mr. Carrots.

MR. SKINFLINT, - - - Of the Priory; Proprietor of The Home and Church Farms.

MR. CUNNINGMAN, Lessee of Mr. Skinflint's Farms, and a believer in "Every Man his own Lawyer."

Mr. Stubbles, - - - - - - - - A Tenant Farmer.
Tom Stubbles, - - - - - - Eldest Son of Mr. Stubbles.
Charlie Stubbles, - - - Youngest Son of Mr. Stubbles.
Mr. Strawless, - - - - - An Unfortunate Agriculturist.
Mr. Cross, - - - - - - A Cantankerous Agriculturist.
Mr. Fieldman, - - - - - An Experimental Agriculturist.
Mr. Steelum, - - - - - - - A Poaching Farmer.
Mr. Closephist, - - - - - - - - A Careful Farmer.
Mr. Prowler, - - - A Town Sportsman and a Pot-hunter.
Joseph Cockley, - - Of Firthorpe, a Pheasant Farm Proprietor.
Samuel Spotem, - - - - - - An Inland Revenue Officer.
Bob Pickemup, - - - - - A Poacher of Deadem Green.
Mrs. Pickemup, - - - - - - Wife of Robert Pickemup.
Mrs. Sarah Ann Mullins, - - Mr. Pickemup's Mother-in-law.
Mike Kelly, - - - - - - - An Irish Loafer of Deepdale.
James Green, Wandering Will, } - - - - Poachers and Ne'er-do-weels.
Mr. Hardup, - - - - - - - A Sporting Publican.
Joe Swishem, - - - - - Ostler of the "Dog and Gun."
Timothy Tattler, - - - - - - Ratcatcher and Poacher.
"Shooting Joe," - - - - - - An Owner of Lurchers.



ADVICE GRATIS

FROM THOSE WHO HAVE PAID FOR IT.

Mr. SIX-AND-EIGHT .. .. "*Nothing is certain in law except the expense.*"

Mr. LEGALLING .. .. .. "*Law and equity are two things which the Gods have joined, but which man hath put asunder.*"

Mr. SPOUTER .. .. .. "*In law what plea so tainted and corrupt, but being well seasoned with a gracious voice, obscures the show of evil.*"

Mr. BUSTLER .. .. .. "*There is no crueller tyranny than that which is perpetrated under the shield of law and in the name of justice.*"

Mr. NEWCALD .. .. .. "*Laws are the very bulwarks of liberty. They define every man's rights, and stand between and defend the individual liberties of all.*"

Mr. SOFTSAP .. .. .. "*Lawyers are needful to keep one out of law.*"

Mr. GIMBLET .. .. .. "*The Lawyer is a gentleman who rescues your estate from your enemies and keeps it to himself.*"

Mr. ERUDITE .. .. "*The Law of the Wise is the fountain of life.*"

P.C. IRONGRIP .. .. "*Lawyers, like painters, can soon make white black.*"

Squire BROADACRES, J.P. "*Lawyers and woodcock have long bills.*"

Mr. SHARPSITE .. .. "*Lawyers are always more ready to get a man into troubles than out of them.*"

PETER HAWK .. .. "*Men are never wise but returning from Law.*"

WILLIAM FALCON .. "*We must not make a scarecrow of the law, although it oft times makes a skeleton of ourselves.*"

JACK FUNNYBONE .. "*Lawyers are they that make their wills their law.*"

Sir JOHN ROCKETTER, Bt., J.P. "*Law ought neither to be warped by favour, broken by power, nor corrupted by money.*"

PATRICK O'LEARY .. "*Law can compel none to do what is impossible.*"

Lord SEAVIEW .. .. "*Let Justice be done though the heavens fall.*"

Mr. SPIDER .. .. .. "*Laws, like cobwebs, catch flies, but let hornets go free.*"

Mr. UPPERTON, J.P. .. "*Laws should be devised that they may always speak with one and the same voice to all.*"

Mr. CARROTS .. .. "*Lawyers' fortunes are compiled from fools' silver.*"

Mr. STINGIMAN .. .. "*Better an empty house than a lawyer in it.*"

Mr. SKINFLINT .. .. "*Extreme law is often extreme wrong.*"

Mr. CUNNINGMAN .. "*No laws exist that yer can't waltz round.*"

Mr. STUBBLES .. .. "*It is to one's honour to combine justice with law.*"

Mr. STRAWLESS .. .. "*Laws exist in vain for those who have not the courage and the means to defend them.*"

Mr. CROSS .. .. .. "*A law ought to be short that it may be the more easily understood.*"

Mr. FIELDMAN .. .. "*For pity is the virtue of the law and none but tyrants use it cruelly.*"

Mr. STEELUM .. .. "*The more by law the less by right.*"

Mr. CLOSEPHIST .. .. "*You little know what a frightful thing it is to go to law.*"

Mr. PROWLER .. .. "*The nets of the law allow small fry to sneak through, big fish to break through, and only the middle size to be caught.*"

JOSEPH COCKLEY .. "*Is not reason the life of the law; nay, the common law is nothing else but reason.*"

SAMUEL SPOTEM .. "*Where there's a* WILL *there is always a lawsuit.*"

BOB PICKEMUP .. .. "*The law is a hass.*"

Mrs. PICKEMUP .. .. "*In a thousand pounds of law there's not a ha'p'orth o' love.*"

Mrs. SARAH ANNE MULLINS "*Law is remarkably dry.*"

MIKE KELLY .. .. "*Law is powerful, but personal wants more so.*"

JAMES GREEN .. .. .. "*As soon as a law is made it's evasion should be found out.*"

WANDERING WILL .. "*No law can be sacred to me but the law of my own nature.*"

Mr. HARDUP .. .. .. "*Law's expensive; stand a quart and settle.*"

JOE SWISHEM .. .. "*Wot's law ain't allus justice.*"

TIMOTHY TATTLER .. "*Faint heart never won fat pheasant.*"

SHOOTING JOE .. .. "*A deep meaning resides in old customs.*"

TO

ERNEST I. WATSON, LL.D.,

IN GRATEFUL ACKNOWLEDGMENT

OF ASSISTANCE RENDERED

TO THE AUTHOR.

LIST OF ILLUSTRATIONS.

PAGE

The Judges of the Court for Crown Cases reserved in the Elsenham Game Egg Case .. .. .. Frontispiece

Over the Boundary 1

Nothing is certain in Law except the expense xiv

A Boundary Fence 11

Showing his Wounds 23

Exit Mr. Tattler 27

An Angry Client 28

An Anxious Client 52

Mr. Cunningman is very attentive 55

Martyrs to the Law 63

Mr. Stubbles.. 70

A Busy Morning 91

Mr. Strawless beamed upon us.. 97

A Good Retrieve 98

"If a porter is leading a dog along a platform" 118

A Learned Bird 121

Rooks by the Thousand 132

Guilty Conscience 133

"Taken his leg off, togs and all!" 139

Contempt for the Law 151

Mistaken Identity? 161

Night Poaching 166

PAGE

It's no offence to be on land at night with nets for rabbits only .. 169

If the poachers attacked the keepers with these sticks 173

The keeper who catches a man trespassing in pursuit 182

Egging 193

My Right there is None to Dispute 202

To test his right he sent his son, a boy of thirteen, to shoot a rabbit on the common 206

Mr. Broadacres 211

Mr. Spouter: "Pardon me . . . . we admit nothing" 224

Mr. Pickemup under Suspicion 234

An Unpleasant Demand 261

"He put on an imaginary limp" 274

Stock Birds 293

A Wolf in Sheep's Clothing 315

Talismen of the Law 316

"Opposite a very promising field of wheat of his, and all my rabbits are in it!" 327

A Youthful Student of the Law 329

Wild Deer 341

The Judges smiled at his contention 357

CONTENTS

CHAPTER I

SPORTING RIGHTS APART FROM OCCUPATION

INCORPOREAL Hereditaments—Definition of Game and Ground Game—Occupiers' Rights—Foxhunters' Rights—A Public Fallacy—Right to Kill annexed to the Soil—*Vi et Armis*—Trespassers' Rights—Hare-hunters' Rights—Falling over Boundary Fence—Ownership in Birds—Running-Birds Page 1

CHAPTER II

BOUNDARY FENCES

RABBITS in Boundary Fence—Birds in same—No Rights at Law to Double a Boundary Fence—What the Presumption of Law is—Interview with Mr. Upperton—Mr. Erudite—Invading the Enemy's Country—Mr. Carrots takes the Law into his own Hands—The Four-Feet Limit Fallacy—The Rule about Ditching—The Necessary Force—Cases where there is no Ditch—A Conundrum on the Ownership of a Fallen Bird—Difficulty in deciding Disputes—Give-and-Take Principle - - - - - - - - - 11

CHAPTER III

RIGHTS ON FOOTPATHS

INTERVIEW with Timothy Tattler, Ratcatcher and Poacher—An Alleged Assault by Squire Broadacres' Keepers—Maliciously Spoiling a Partridge Drive—Present Law on the Uses of Highways—Duke of Rutland's Case—Discretion the Better Part of Valour - - - - - 23

CHAPTER IV

FORESHORES

No. 1, 1898

INTERVIEW with Mr. Prowler—A Shore Shooting Excursion—Attentive Watchers—A Scrimmage—Further Onslaughts—Death of Prowler's Dog—An Awkward Dilemma—Attempts to Compromise—An Ignominious Expulsion—Present Law as to Foreshores—Crown Grants—Manorial Rights—Tide or Water Marks and Limits—Public Fallacies—Mr. Prowler Disputes the Law—Public Rights to the Sea and along the Foreshore - - - - - - - - - Page 28

No. 2, 1908

Another Insult to Mr. Prowler—Pushed off the Foreshore—Public no Legal Right on Foreshore—Except for purposes of Navigation and Fishing—The Joss Bay Case—No Right to Bathe—Fitzhardinge v. Purcell—No Common Law Right of Shooting on Foreshore—Right of Way between two points may be Acquired by Long Use - - - - 44

CHAPTER V

A PRACTICAL ILLUSTRATION OF THE RESERVATION OF SPORTING RIGHTS TO THE LANDLORD

INTERVIEW with Mr. Cunningman — Squire Skinflint's Two Agreements—Definition of Wildfowl—Distinction between Trespass and Trespass in Pursuit—Dodging round an Agreement—What would be expected under a Reservation of Game—Tenant has no Power to Authorise his Friends to Shoot—"A Rum Law"—Tenant's Rights as against a Landlord—Agricultural Holdings Act, 1908—Compensation for Damage by Game - - - - - - - - - 52

CHAPTER VI

THE GROUND GAME ACTS, 1880 & 1906

OBJECT of the Act—Act Compulsory—Suggestion for avoiding Act on Grasslands—Summary of Concurrent Rights—

Meaning of Terms "A Member of his Household," "Ordinary Service," and "Person *bonâ-fide* employed for Reward"—An Interview—Tenant's Son shoots Rabbits —Written Authority—Keeper intervenes and demands Authority—Keeper's Authority questioned—The Tables turned—Licences required—How the provisions of the Act can be curtailed—Another Interview—Landlord and Tenant both wish to avoid the Act—How it was proposed to drive through or avoid the Act—General Application of the Act—Rights of occupying Owners—Curious Contrast of Cases—Rights of Occupier having also Sporting Rights as against Occupying Owner's Rights—Market Gardeners' Rights—Moorlands and Uninclosed Grasslands—Lords of Manors and Owners of Franchises - - - - Page 63

CHAPTER VII

CAN ANYONE SHOOT GROUND GAME WITHOUT A LICENCE?

INTERVIEW with Mr. Strawless—Gun Licence Act, 1870—The Hares Act, 1848—Definition of Gun—Liability for using an Air-gun or Cross-bow—Exemptions from Liability—£20 Penalty for Shooting Rabbits, Snipe, Landrails, etc., on a Public Common without a Licence to Kill Game - - 91

CHAPTER VIII

THE SPORTSMAN AND HIS DOG

TRESPASS by Dog not necessarily Trespass by Owner—Curious Cases—Coursing with Greyhounds—Lurchers—"Scienter"—Fallacy of "One Free Bite"—Exception in case of dogs worrying sheep, &c.—Shooting trespassing dogs when lawful—By Lord of Manor—Malicious injury to—Cruelty to—Dog-Spears—Traps set for Dogs—Poison —An Interview—A Game of Bluff—Poachers outwitted by an Artful Keeper—Dogs in the Train—Common Carriers as Insurers—Their Liability—Conditions limiting liability must be Signed and be Reasonable—Excessive Insurance Rates unreasonable—Carriers' and Owners' Risks - - 98

CHAPTER IX

ROOKS

INTERVIEW with Mr. Cunningman—Tenants' and Landlords' Rights as to Rooks—a Most Quaint and Curious Old Case—Special Rights to Rooks in a Rookery—An Act of Parliament (in Henry VIII's Reign) to destroy Rooks—Ancient Customs to destroy Rooks—An Act in Elizabeth's Reign providing Rewards for killing Rooks—Present Law relating to Rooks - - - - - - - - Page 121

CHAPTER X

TRESPASS AT COMMON LAW

WHAT constitutes a Trespass—Popular Fallacies—How to prevent Trespassing—Traps for Trespassers—An Interview—The Mystery of Deepdale Manor—Wooden Falsehoods—Man-trap publicly exhibited with an unclaimed Human Leg—Village in Arms—Special Acts dealing with Man-traps—A Dilemma—A Quiet Dinner, the Cunning Medico, and the Mystery explained - - - - - - - 133

CHAPTER XI

TRESPASS IN PURSUIT OF GAME

THE Four Acts dealing with this Offence—What is Trespass in Pursuit?—Personal Entry Necessary to Constitute—Rights on the Highway—"The Continuous Act"—Distinction between Larceny and Trespass in Pursuit—A Case in Point—Fresh Impulse—Entering Land by Night with a Lantern to recover Dead Game no Offence—Foreshore Rights—What is a Tidal River—Shooting from the Highway—An Interview—Wandering Will's Lurcher—A Difference between Trespassing in Pursuit and rounding-up a Neighbour's Game with a Dog—Personal Entry—A Serious Flaw in the Game Act - - - - - - - 151

CHAPTER XII

NIGHT POACHING

NIGHT Poaching—Definition of Night—The Two Acts regulating the Offence—A Weak Spot in the Game Act—Definition of words "To Take"—Serious Omissions from the Night Poachers Act—An Issue dependent upon the Correctness of Aim—Joint Adventure—Difference between Night Poaching and Day Poaching—Waste Lands—What is an Offensive Weapon—Offences and Punishments—A Keeper of the Old School—His Contempt for the Law—How he served Poachers—A Narrow Escape from a Serious Charge—Circumventing Egg-Stealers—"Laws act after crimes have been committed; prevention goes before them both" - - - - - - - - - - - Page 166

CHAPTER XIII

ARREST OF POACHERS

THE Poaching Prevention Act—Arrest in the Daytime—False Name or Address—Who are entitled to demand Name and Address—Five or more trespassing together—Futility of Power given by the Act—Arrest at Night—Person found committing Offence—By whom may be Arrested—Not by Gamekeeper of Sporting Tenant—Arrest when Poacher on Highway—When on Enclosed Land—Any Person may Arrest in case of Indictable Offence at Night—The Poaching Prevention Act—Game defined thereunder—Powers of the Police with Authority to Search—Why the Act was passed—Propositions explaining the Act—Necessity for Constable to follow Act strictly—Advantages of the Act 180

CHAPTER XIV

EGGING

SECTION 24 of the Game Act, 1831—Poaching Prevention Act extends to Game Eggs only—No Offence to take Wild Birds' Eggs at Common Law—Unless Eggs reduced into

possession—Decision in the Elsenham Case—Severity of Sporting Magistrates—A Hard Case—Encouraging Crime—Future Scores to be Balanced - - - - - Page 193

CHAPTER XV

JURISDICTION OF JUSTICES

THE "Claim of Rights"—Interesting Cases—*Mens rea*—Presumption of Knowledge—Claims of Common—Honest and Reasonable Belief a Question of Facts - - - - 202

CHAPTER XVI

IS GAME THE SUBJECT OF LARCENY?

AN Interview—A Retainer from Squire Broadacres—Rabbit Snares circumvented in Court—Procedure—Trespassing in Pursuit as distinguished from Larceny—Scene at the Petty Sessional Court-House—The Cross-Examination—A Deep and Subtle Defence—Mr. Six-and-Eight defeated—The Poacher's Short-Lived Triumph—A Smart Arrest—The Assize Court—A True Bill for Larceny—The Trial—The "Funny" Witness—An Opponent too cheaply held—An Attempt to retrieve the Case—Too Late—A Clever Counsel and his Speech for the Defence—The Success of an Artful Plant—Mr. Six-and-Eight again Defeated—A Philosophic View - - - - - - - 211

CHAPTER XVII

PROVING AN ALIBI

AN over-zealous Articled Clerk—Mr. Pickemup's Trouble—Poaching by Night, Armed—The Fight with Keepers and Watchers—Poachers' Defence Fund—An Obliging Witness—A Breakdown—Intimidation of Witnesses and its Results—A Last Resource—Face-repairing extraordinary—Opening of the Case—Mr. Bustler's Cross-Examination—The Alibi—The Obliging Witness's Story—The Dangerous Witness—A Critical Moment—The Situation saved by a

Sneeze—Prisoner Discharged without a Stain on his Character — Mr. Legalling confesses and receives an Admonition - - - - - - - - - - Page 234

CHAPTER XVIII

LICENCES

RECENT Change in Law—Transfer of Collection of Licence Duties to County Councils—Police substituted for Excise Officers—County Council only can Prosecute for Excise Penalties—Licences to Kill Game—When a Game Licence is required to Kill Rabbits, Hares, Woodcock and Snipe—Snaring and Coursing—Aiding or Assisting—Liability of Beaters, Keepers, and Loaders—Liability for using Dogs by Unlicensed Persons—A Minor—Penalties—Transfer of Licence—The Man-servant Tax—How to avoid the Law—Forfeiture of Licence—An Amusing Recollection—The Athlete and the Excise Officer—An Exciting Chase and how it ended—Gun Licences—Meaning of "Curtilage"—Exemptions from the Act—What are Vermin?—Powers enforceable on non-production of Licence—Carrying a Gun in Parts—Definition of the Word "Gun"—Penalties—Licences to Deal in Game for purpose of—Definition of "Game"—Licence required—To whom Granted—Diqualification—Not Transferable—How far an Innkeeper may go—The only Persons to whom the Holder of a Game Licence may Sell—From whom a Licensed Dealer may Buy—Liability of Consumer—Dealing in or holding Game during Close Time—The Hares Preservation Act—Dealers' Notice-Boards—Dealers' Forfeitures—Licences to deal in Game—Glaring Examples of Injustice—The Middleman—How Dealers and Poachers sail round the Acts of Parliament—Close Time. 261

CHAPTER XIX

GAME FARMS AND STOCK BIRDS

INTERVIEW with Mr. Joseph Cockley—The World's Game Farm and Aviaries—Samuel Spotem's Cunning—Cockley's False

Pride and Dastardly Revenge—Spotem's Legal Studies and their Result—Summons for having Pheasants in Possession during the Close Time—Section 4 of the Game Act, 1831—Game Breeders Selling without a Licence liable to Penalty—Exemption in the Game Act, 1831, in favour of Unlicensed Persons keeping Birds in a Mew—Present Law as to Game Farms and Selling Live Pheasants during the Close Season - - - - - - - Page 293

CHAPTER XX

PROTECTION OF WILD BIRDS

Dog Licences required for every Sporting Dog—Exemption of Puppies—When Renewable—Licence Personal—Penalty—Person in Custody of Dog deemed to be Owner until contrary proved—Wild Birds Protection Acts—Serious Omissions—How far Remedied by recent Acts—Breaking the Law at a Profit—Powers of the County Council—An Absurdity in the Practical Working of the Power—Illustration of Absurdity—A Suggested Remedy—Setting Traps, etc., for—Setting Snares for—Schedule to Wild Birds Protection Act, 1880 - - - - - - - - 305

CHAPTER XXI

CLOSE TIMES, POISONS, MANORS, AND WARRENS

Close Time for Game in England—A Difference made between Sunday and Christmas Day—No prohibition against Shooting *at* Game—A Curious Exception under the Act—A Snare is an Engine—How Snarers may be convicted and how they can evade the Law—No Close Time for Rabbits—Killing Game by Night—Laying Poison with intent to Destroy Game—Sowing Poisoned Grain—Manors—The Baronial Court—Wastes—Manorial Rights and Powers—Seizing Dogs and Poaching Appliances—Shooting Dogs—Arrest—Seizing Game—Exemptions and Reservations—Securing Sporting Rights from the Soil—Manorial Rights on Commons—Warrens—"Free Warrens"—Special Penalties for taking Rabbits in Warrens—Warren Rights—

Everyone must Fence against his own Stock—An Exception —An Interview—The Difficulties of a Rabbit Farmer—His Liabilities—An Amicable Compromise - - - - Page 316

CHAPTER XXII

AGREEMENTS RELATING TO THE HIRE OF SPORTING RIGHTS

SPECIAL Agreements—Verbal Agreements—Must be under Seal —Part Performance—A Simple Form of Agreement—Stamps—Provisions of the Agreements explained—No Injunction to enforce the Killing of Game—How to provide against Overstocking—Compensation for Damage to Crops—Effects of Agricultural Holdings Act, 1908—Arbitration—Reservation of Keeper's House and Rearing Grounds—Fencing - - - - - - - - - - 329

CHAPTER XXIII

DEER

RIGHTS of Property in Deer—Wild Deer not included in the term "Game"—Tame Deer the subject of Larceny—Deer in Parks—A Fine Distinction—Penalties for unlawfully Killing Deer—Possessor of Deer's Carcase must account for his Possession—An Inquisitorial Provision—Protection of Foresters and Park-Keepers—Rights of Property in Dead Deer—An Amateur Deerstalker—His Sport interrupted—Rescuing the Quarry—A contemplated Prosecution and why it failed - - - - - - - - - - - 341

CHAPTER XXIV

RATING OF SPORTING RIGHTS

SPORTING Rights formerly not separately Rateable—But Occupier having Sporting Rights always Assessed on Increased Value of Land—Act of 1874—Applies only when Sporting Rights severed from Land—Difference between Mode of Assessment when Rights reserved by Landlord and when Let Separately—Who Liable to Rates when Sporting

Rights let by Word of Mouth or Agreement not under Seal — Curious Result of Agricultural Rates Act, 1896, and Public Health Act, 1875—Rating of Plantations and Underwoods—Principle of Assessment of Sporting Rights —Appeals - - - - - - - - - - Page 350

CHAPTER XXV

THE SPORTSMAN AND HIS HORSE

HORSE Dealing—Essentials of an Enforceable Contract for Sale—When Writing Needed — Earnest-Money — Agreements for Hire and Exchange—When Warranties must be in Writing—What is Unsoundness?—Can a Horse be Returned for Breach of Warranty?—Rights and Liabilities of Hirers of Horses—Lien on Horses—Lien for Services rendered—Blacksmith, Horsebreaker, Livery-Stable Keeper have no Lien for Keep—Innkeepers have Generel Lien for Guest's Bill—When Lien Lost—Liability for Damage or Injury caused by a Horse—Racing—When Action can be brought for Stakes — Distinction between Stakes and Wager—Gaming Acts, 1845 and 1892—Commission Agent's Position worse than Bookmaker's—Fresh consideration for giving Time to Pay Bet—Recent Cases on Question—Gaming Act, 1835—Cheques given for Bets on Races—Betting and Loans (Infants) Act, 1892 — What is a "Place?" — Betting Act, 1853 — Inside and Outside — "Bookies?"—"Sporting Luck" Competition - - 364

CHAPTER XXVI

THE SPORTSMAN AND HIS ROD

RIGHT of Fishing in Crown Waters—Grants of same to Private Persons—Several Fishery Rights under Enclosure Acts—No Public Right in Non-Tidal Waters—Grant of Right of Fishing — Fishery Acts — Norfolk and Suffolk and other Places Governed by Special Acts—Formation of Boards of Conservators—Artificial Waters not Subject to Jurisdiction of—Constitution of Boards—Licences for Salmon, Trout,

and Char Fishing—Penalties for Fishing without Licence—Tickling Trout Illegal—Close Times—Power to vary same—Owner of Land may Angle for other Freshwater Fish at any time—Penalties for Fishing in Close Season—General Offences—Taking Unclean Salmon, Trout, or Char—Using Fish Roe—Using Lights, etc.—Unlawful Angling in Private Waters—Power to Seize Offenders Tackle—Provisional Order Districts—Provisions of Usk and Wye Provisional Orders—Special Close Times in Certain Districts—Table of Fishery Districts, Close Times and Licence Duties - Page 394

APPENDIX

PURITY OF SPORT

PURITY of Sport—The Field Sports and Game Guild—Illicit Trade in Game Eggs—Report of the Elsenham Game Egg Case 432

TABLE OF STATUTES

		PAGE
1532-3	24 Hen. VIII. c 10 Destroying Rooks, &c.	129
1533-4	25 Hen. VIII. c 11 Protection of Wildfowl	132
1566	8 Eliz. c. 15 Destroying Rooks	130
1601	43 Eliz. c. 2 The Poor Relief Act, 1601	350
1772	13 Geo. III. c. 54 The Game (Scotland) Act, 1772 ..	3
1827	7 & 8 Geo. IV. c. 53 The Excise Management Act, 1827	269, 279, 286, 291
1828	9 Geo. IV. c. 69 The Night Poachers Act, 1828	167 *et seq.*, 183, 322
1831	1 & 2 Will. IV. c. 32 The Game Act, 1831	2
	Sec. 2	
	Sec. 3	317 *et seq.*
	Sec. 4	298
	Sec. 8	2
	Sec. 10	323
	Sec. 12	56
	Sec. 13	109, 321
	Sec. 14	321
	Sec. 16	321
	Sec. 17	286
	Sec. 18	282, 283
	Sec. 21	283
	Sec. 22	287
	Sec. 23	269
	Sec. 24	193
	Sec. 25	285, 286
	Sec. 26	284
	Sec. 27	285
	Sec. 28	285, 287
	Sec. 30	58, 152, 181
	Sec. 31	180, 181
	Sec. 32	182

PAGE

Sec. 33 152
Sec. 34 152
Sec. 35 .. .. 103, 160, 322
Sec. 36 .. .. 183, 322
Sec. 41 .. .. 160, 263
Sec. 42 263
Sec. 46 322

1835 5 & 6 Will. IV. c. 41 The Gaming Act, 1835 388
1836 6 & 7 Will. IV. c. 96 The Parochial Assessment Act, 1836 360
1844 7 & 8 Vict. c. 29 The Night Poaching Act, 1844 167, *et seq.* 183
1845 8 & 9 Vict. c. 109 The Gaming Act, 1845 .. .. 380, *et seq.*
1848 11 & 12 Vict. c. 29 The Hares Act, 1848 .. .. 93, 266, 319
1848 11 & 12 Vict. c. 43 The Summary Jurisdiction Act, 1848 263, 416
1848 12 Vict. c. 99 The Inclosure Act, 1848 323
1848 11 & 12 Vict. c. 118 263
1849 12 & 13 Vict. c. 92 The Prevention of Cruelty to Animals Act, 1849 108
1853 16 & 17 Vict. c. 119 The Betting Act, 1853 389
1854 17 & 18 Vict. c. 31 The Railway and Canal Traffic Act, 1854 115
1860 23 & 24 Vict. c. 90 The Game Licences Act, 1860 .. 264, *et seq.* 286, 322
1861 24 & 25 Vict. c. 91 The Revenue (No. 2) Act, 1861 .. 286
1861 24 & 25 Vict. c. 96 The Larceny Act, 1861 .. .. .. 183 324, 343, *et seq.*, 413, *et seq.*
1861 24 & 25 Vict. c. 97 The Malicious Damage Act, 1861 .. 103 107, 134, 413
1861 24 & 25 Vict. c. 109 The Salmon Fishery Act, 1861 398, *et seq.*
1862 25 & 26 Vict. c. 103 The Union Assessment Committee Act, 1862 362
1862 25 & 26 Vict. c. 114 The Poaching Prevention Act, 1862 185, *et seq.*
1863 26 & 27 Vict. c. 33 The Revenue Act, 1863 283
1863 26 & 27 Vict. c. 113 The Poisoned Grain Prohibition Act, 1863 320
1864 27 & 28 Vict. c. 39 The Union Assessment Committee, Act, 1864 362
1864 27 & 28 Vict. c. 67 The Game Trespass Act, 1864 (Ireland) 3
1864 27 & 28 Vict. c. 115 The Poisoned Flesh Prohibition Act, 1864 111
1865 28 & 29 Vict. c. 121 The Salmon Fishery Act, 1865 398, *et seq.*
1867 30 Vict. c. 5 The Dog Licences Act, 1867 .. .. 291, 292

			PAGE
1870	33 & 34 Vict. c. 57	The Gun Licence Act, 1870	92, 276, *et seq.*
1871	34 & 35 Vict. c. 56	The Dogs Act, 1871	109
1873	36 & 37 Vict. c. 71	The Salmon Fishery Act, 1873..	398, *et seq.*
1874	37 & 38 Vict. c. 54	The Rating Act, 1874	351, *et seq.*
1875	38 & 39 Vict. c. 56	The Public Health Act, 1875 ..	353, *et seq.*
1876	39 & 40 Vict. c. 19	The Salmon Fishery Act, 1876..	398, *et seq.*
1876	39 & 40 Vict. c. 29	The Wildfowl Preservation Act, 1876..	55
1877	40 & 41 Vict. c. 29	The Fisheries (Dynamite) Act, 1877 ..	413
1877	40 & 41 Vict. c. xcviii	The Norfolk and Suffolk Fisheries Act, 1877	398
1878	41 Vict. c. 15	The Customs and Inland Revenue Act, 1878	263, 291, 292
1878	41 & 42 Vict. c. 38	The Innkeepers Act, 1878	374
1878	41 & 42 Vict. c. 39	The Freshwater Fisheries Act, 1878	398, *et seq.*
1879	42 & 43 Vict. c. 49	The Summary Jurisdiction Act, 1879..	269, 279, 286, 291
1880	43 & 44 Vict. c. 35	The Wild Birds Protection Act, 1880..	55, 305, *et seq.*
1880	43 & 44 Vict. c. 47	The Ground Game Act, 1880	2
	Secs. 1, 2 and 3	.. ..	63, *et seq.*
	Sec. 3	.. ..	76
	Sec. 4	.. ..	75, 286
	Sec. 5	.. ..	89
	Sec. 6	.. ..	66
	Sec. 8	.. ..	
1881	44 & 45 Vict. c. 51	The Wild Birds Protection Act, 1881	305, *et seq.*
1883	46 & 47 Vict. c. 55	The Customs and Inland Revenue Act, 1883	276
1884	47 & 48 Vict. c. 11	The Fresh-water Fisheries Act, 1884	398, *et seq.*
1886	49 & 50 Vict. c. 39	The Salmon and Fresh-water Fisheries Act, 1886	398, *et seq.*
1888	51 & 52 Vict. c. 41	The Local Government Act, 1888	311, 399
1890	53 & 54 Vict. c. 21	The Inland Revenue Regulation Act, 1890	262, 263
1891	54 & 55 Vict. c. 57	The Fisheries Act, 1891	398
1892	55 Vict. c. 4	The Betting and Loans (Infants) Act.. ..	389
1892	55 Vict. c. 9	The Gaming Act, 1892	381, *et seq.*
1892	55 Vict. c. 8	The Hares Preservation Act, 1892 ..	287, 290
1892	55 Vict. c. 9	The Gaming Act	
1893	56 Vict. c. 7	The Customs and Inland Revenue Act, 1893	284
1893	56 & 57 Vict. c. 71	Sale of Goods Act, 1893, sec. 4.. ..	364

			PAGE
1894	57 & 58 Vict. c. 24	The Wild Birds Protection Act, 1894 ..	311
1894	57 & 58 Vict. c. 73	The Local Government Act, 1894 ..	282
1896	59 & 60 Vict. c. 16	The Agricultural Rates Act, 1896	353, *et seq.*
1896	59 & 60 Vict. c. 56	The Wild Birds Protection Act, 1896 ..	306
1898	61 & 62 Vict. c. 36	The Criminal Evidence Act, 1898	219 *n*, 239 *n*.
1902	2 Edw. VII. c. 6	The Wild Birds Protection Act ..	306, 312
1903	3 Edw. VII. c. 18	The Pistols Act, 1903	281
1903	3 Edw. VII. c. 31	The Board of Agriculture and Fisheries Act, 1903	399
1904	4 Edw. VII. c. 4	The Wild Birds Protection Act, 1904 ..	314
1904	4 Edw. VII. c. 10	The Wild Birds Protection (St. Kilda Act), 1904	311
1906	6 Edw. VII. c. 21	The Ground Game (Amendment) Act, 1906	63, 66, 77, 87
1906	6 Edw. VII. c. 32	The Dogs Act, 1906	105, 109
1906	6 Edw. VII. c. 43	The Street Betting Act, 1906	392
1907	7 Edw. VII. c. 15	The Salmon and Fresh-water Fisheries Act, 1907	398
1908	8 Edw. VII. c. 11	The Wild Birds Protection Act, 1908	261, 314
1908	8 Edw. VII. c. 16	The Finance Act, 1908	
1908	8 Edw. VII. c. 28	The Agricultural Holdings Act, 1908 ..	60, 336, 337
1908	8 Edw. VII. c. 140	The Usk Fisheries Provisional Order Confirmation Act, 1908	416
1908	8 Edw. VII. c. 141	The Wye Fisheries Provisional Order Confirmation Act, 1908	416
1908	8 Edw. VII. c. 15	Costs in Criminal Cases Act, 1908 ..	173

TABLE OF CASES

The Author is indebted to Mews Digest for the greater part of the reference to the contemporary reports in the following table. The *Law Reports* from 1891 onwards are quoted by the year and the volume; as, however, in this table the year appears in the first column it has not been thought necessary to repeat it before the reference to the Law Reports; in the references opposite the case of Brinckman v. Matley for example, "2 Ch." will be read as (1904) 2 Ch.

Except in one instance all the references to the Law Journal Reports are to the New Series commencing in 1831. It has not been thought necessary to insert the words N.S. in the references.

			PAGE
1870	Allen v. Thompson ..	39 L.J., M.C. 102; 5 L.R., Q.B. 336; 22 L.T. 472; 18 W.R. 1196	319
1904	Alton Urban Dis. Council v. Spicer.	73 L.J., K.B. 280; 1 K.B. 678; 90 L.T. 576; 52 W.R. 624; 68 J.P. 256	355
1900	Anderson v. Vicary ..	69 L.J., Q.B. 713; 2 Q.B. 287; 83 L.T. 15; 48 W.R. 593 ..	85
1883	Angus v. McLachan ..	52 L.J., Ch. 587; 23 Ch. D. 330; 48 L.T. 863; 31 W.R. 641	375
1903	Armstrong v. Mitchell ..	88 L.T. 870; 67 J.P. 329 ..	108
1884	Asquith v. Griffon ..	48 J.P. 724	277
1865	Barker v. Davies	34 L.J., M.C. 140; 11 Jur., N.S. 651	2
1907	Barnard v. Roberts ..	96 L.T. 648; 71 J.P. 277; 23 T.L.R. 439	414
1907	Barnes v. Lucille	96 L.T. 680; 23 T.L.R. 389 ..	105
1862	Birkbeck v. Paget ..	31 Beav. 403	333
1865	Blades v. Higgs	34 L.J., C.P. 286; 11 H.L.C. 621; 20 C.B., N.S. 214; 11 Jur., N.S. 701; 12 L.T. 615	7

			PAGE
1863	Bland v. Lipscombe ..	4 El. and Bl. 713a; 3 C.L.R. 261	397
1598	Boulston's case	5 Co. Rep. 104 b: 77 Eng. R. 216	324
1904	Brinckman v. Matley ..	73 L.J., Ch. 642; 2 Ch. 313; 91 L.T. 429; 68 J.P. 534; 20 T.L.R. 671	48
1841	Brown v. Elkington ..	10 L.J., Ex. 336; 8 M. & W. 132; 58 R.R. 645	367
1899	Brown v. Patch	68 L.J., Q.B. 588; 1 Q.B. 892; 80 L.T. 716; 47 W.R. 623; 63 J.P. 421	391
1900	Burge v. Ashley	69 L.J., Q.B. 538; 1 Q.B. 744; 82 L.T. 518; 48 W.R. 438	381, 384
1876	Campbell v. Hadley ..	40 J.P. 756	281
1897	Carney v. Plimmer ..	66 L.J., Q.B. 415; 1 Q.B. 634; 76 L.T. 374; 45 W.R. 385; 61 J.P. 324	386
1908	Chesterfield (Earl of) v. Harris.	77 L.J., Ch. 688; 1908, 2 Ch. 397; 99 L.T. 558; 24 T.L.R. 763	396
1834	Chesterman v. Lamb ..	2 A. & E. 129; 4 N. & M. 195; 41 R.R. 397	369
1811	Churchward v. Studdy ..	14 East 249; 12 R.R. 513 ..	7
1869	Clarke v. Crowder ..	38 L.J., M.C. 118; 4 L.R., C.P. 638; 17 W.R. 857	189
1903	Clarke v. Randall	Court of Appeal, 15th May, 1903	378
1757	Cooper v. Marshall ..	1 Burr 259; 96 Eng. R. 1086 ..	324
1863	Cocks v. Burbridge ..	32 L.J., C.P. 89; 17 C.B., N.S. 245; 9 Jur., N.S. 970; 11 W.R. 435	376
1898	*Re* Cronmire, *ex parte* Waud	67 L.J., Q.B. 620; 2 Q.B. 383; 78 L.T. 483; 46 W.R. 679	385
1896	Curran v. M.G.W.R. of Ireland.	2 Ir. R. 183	118
1902	Davis v. Stoddart	*See* Lennox v. Stoddart ..	393
1863	Day v. Bather	32 L.J., Ex. 171; 2 H. & C. 14; 9 Jur., N.S. 440; 8 L.T. 205; 11 W.R. 575	374
1887	Dickson v. G.N.R. Co. ..	56 L.J., Q.B. 111; 18 Q.B.D. 176; 55 L.T. 868; 35 W.R. 202; 51 J.P. 388	116
1877	Diggle v. Higgs	46 L.J., Ex. 721; 2 Ex. D. 422; 37 L.T. 27; 25 W.R. 777..	381
1907	Duncan v. Knill	96 L.T. 911; 71 J.P.	312
1886	Eley v. Lytle	50 J.P. 308	134

			PAGE
1859	Ellis v. Hopper	28 L.J., Ex. 1; 3 H. & N. 766; 4. Jur. N.S. 1025; 7 W.R. 15	378
1875	Ellis v. Loftus Iron Co. ..	44 L.J., C.P. 24; 10 L.R.C.P. 10; 31 L.T. 483; 23 W.R. 246	376
1842	Evans v. Pratt	11 L.J., C.P. 87; 3 M. & G. 759; 4 Scott N.R. 370 ..	379
1881	Eyton v. Mold	50 L.J., M.C. 39; 6 Q.B.D. 13; 43 L.T. 472; 29 W.R. 122; 45 J.P. 54	359
1885	Farrer v. Nelson	54 L.J., Q.B. 385; 25 Q.B.D. 258; 52 L.T. 786; 33 W.R. 800; 49 J.P. 725	333
1908	Fitzhardinge (Lord) v. Purcell	77 L.J., Ch. 529; 2 Ch. 139; 99 L.T. 154; 72 J.P. 276; 24 L.T.R. 564 ..	49, 395
1849	Forth v. Simpson	18 L.J., Q.B. 263; 132 B.D. 680; 13 Jur. 1024	372
1887	Gardner v. Mansbridge ..	19 Q.B.D. 217; 57 L.T. 265; 35 W.R. 809; 51 J.P. 612	135
1898	Gayford v. Chouler ..	67 L.J., Q.B. 404; 1 Q.B. 316; 78 L.T. 42; 62 J.P. 165 ..	134
1842	Goldsmith v. Martin ..	11 L.J.C.P. 201; 4 M. & G. 5; 4 Scott N.R. 620	379
1908	Goodson v. Baker	98 L.T. 415: 24 T.L.R. 338 ..	387
1908	Goodson v. Grierson ..	77 L.J., K.B. 507; 1 K.B. 761; 98 L.T. 740; 24 T.L.R. 364	387
1897	Grange v. Silcock	77 L.T. 340; 46 W.R. 221 ..	106
1902	Green v. Carstang ..	85 L.T. 615; 66 J.P. 102 ..	307
	Guy v. West	2 Selw. N.P. 1287	14
1889	Guyer v. Reg.	58 L.J., Q.B., M.C. 81; 23 Q.B.D. 100; 60 L.T. 824; 37 W.R. 586; 53 J.P. 436	287
1824	Hannam v. Mockett ..	2 L.J. (Old Series), K.B. 183; 2 B. & C. 934; 4 D. & R. 518; 26 R.R. 591	124
1882	Harbottle v. Terry ..	52 L.J., M.C. 31; 10 Q.B.D. 131; 88 L.T. 219; 31 W.R. 289; 47 J.P. 186 ..	400
1875	Hargreaves v. Diddams ..	44 L.J., M.C. 178; 10 L.R., Q.B. 582; 32 L.T. 600; 23 W.R. 828	397
1884	Harnet v. Miles	48 J.P. 455	299

			PAGE
1893	Harrison v. Rutland (Duke of)	62 L.J., Q.B. 117; 1 Q.B. 142; 68 L.T. 35; 41 W.R. 322; 57 J.P. 278	26
1897	Hawke v. Dunn	66 L.J., Q.B. 364; 1 Q.B. 579; 76 L.T. 355; 45 W.R. 359; 61 J.P. 292	390
1904	Henniker v. Howard ..	90 L.T. 157	14
1909	Hodgkins v. Simpsom ..	25 T.L.R. 53	387
1849	Holford v. Pritchard ..	18 L.J., Ex. 315; 3 Ex. 793 ..	397
1908	Hollis v. Young	98 L.T. 751; 72 J.P. 199; 24 T.L.R. 500	307
1909	,, ,, ...	78 L.J., K.B. 340; 1 K.B. 629..	307
1898	Horne v. Raine	67 L.J., Q.B. 533; 78 L.T. 654; 62 J.P. 420	153
1864	Hudson v. Macrea ..	33 L.J., M.C. 65; 4 B. & S. 585; 12 W.R. 80	416
1902	Hunter v. Clarke	66 J.P. 247	267
1908	Hyams v. Stuart King ..	77 L.J., K.B. 794; 2 K.B. 696; 99 L.T. 424; 24 T.L.R. 675	387
1820	Ilott v. Wilkis	3 Barn. & Ald. 304; 22 R.R 400	141
1839	Jackson v. Cummings ..	8 L.J., Ex. 265; 5 M. & W., 342; 3 Jur. 436	372
1865	Jeffryes v. Evans	34 L. J., C.P. 261; 19 C.B., N.S. 264; 11 Jur., N.S. 584; 13 L.T. 72; 13 W.R. 864	333
1872	Jenkin v. King	(Also reported as Reg. v. Cornwall Justices) 41 L.J., M.C. 145; 7 L.R., Q.B. 478; 26 L.T. 428; 20 W.R. 669	191
1834	Jones v. Tylor	3 L.J., K B. 166; 1 A. & E. 522; 3 N. & M. 576; 40 R.R. 354	374
1902	Jones v. Davies	86 L.T. 447; 66 J.P. 439 ..	397
1877	Jones v. Williams.. ..	46 L.J., M.C. 270; 36 L.T. 559	2
1841	Jordin v. Crump	11 L.J., Ex. 74; 8 M. & W., 782; 5 Jur. 1113	110
1705	Keeble v. Hickergill ..	11 East 574 n; 11 R.R. 273 n; 88 Eng. R., 898, 945 ..	131
1880	Kenrick v. Overseers of Guilsfield	49 L.J., M.C. 27; L.R. 5, C.P.D. 41; 41 L.T. 624; 28 W.R. 372; 44 J.P. 202	357

			PAGE
1865	Kenyon v. Hart	34 L.J., M.C. 87; 6 B. & S. 249; 11 Jur., N.S. 602; 11 L.T. 733; 13 W.R. 406	153
1842	Kiddell v. Burnard ..	11 L.J., Ex. 268; 9 M. & W. 668; 2 Car. & M. 291; 6 Jur. 327; 60 R.R. 857	367
1814	Kingsnorth v. Bretton ..	5 Taunton 416	322
1909	Ladbrooke v. Buckland ..	25 T.L.R. 55	387
1865	Lee v. Riley	34 L.J., C.P. 212; 18 C.B., N.S. 722; 11 Jur., N.S. 822; 13 W.R. 774.	376
1902	Lennox v. Stoddart; Davis v. Stoddart	71 L.J.K.B. 747; 2 K.B. 21; 87 L.T. 283; 66 J.P. 469 ..	393
1901	Levy v. Warburton ..	70 L.J., K.B. 708	383
1885	Lloyd v. Lloyd	14 Q.B.D. 725; 53 L.T. 536; 33 W.R. 457; 49 J.P. 630 ..	189
1861	Loome v. Bailey	30 L.J., M.C. 31; 3 El. & El. 444; 6 Jur., N.S. 1299; 3 L.T. 406; 9 W.R. 119 ..	300
1901	Lowe v. Adams	70 L.J., Ch. 783; 2 Ch. 598; 85 L.T. 195; 50 W.R. 37	330, 333, 334
1908	Luckett v. Wood	24 T.L.R. 617	386
1863	Malcolmson v. O'Dea ..	1 D.H.L., Cas. 593; 9 Jur., N.S. 1135; 9 L.T. 93; 12 W.R. 178; 11 Eng. Rep. 1155	395
1901	Mann v. Nurse	17 T.L.R. 569	210
1842	M'Laughlin v. Prior ..	11 L.J., C.P. 169; 4 M. & G. 48; 4 Scott N.R. 655; 1 C. & Marsh 354; 61 R.R. 455	371
1910	May v. Waters	45 L.J., N.C. 72	87
1893	Micklethwaite v. Vincent	69 L.T. 57	158
1903	Miles v. Hutchings ..	72 L.J., K.B. 775; 2 K.B. 704; 89 L.T. 420; 52 W.R. 284	108
1895	Morgan v. Jackson ..	64 L.J., Q.B. 462; 1 Q.B. 885; 72 L.T. 593; 43 W.R. 479; 59 J.P. 327	84
1878	Mulliner v. Florence ..	47 L.J., Q.B. 700; 3 Q.B. D. 484; 38 L.T 167; 26 W.R. 385	374
1889	Murray v. Thompson ..	58 L.J., M.C. 41; 22 Q.B. D. 142; 53 J.P. 70	291
1871	Musgrave v. Forster ..	40 L.J., Q.B.D. 207; 6 L.R., Q.B. 590: 24 L.T. 614; 19 W.R. 1141	323

			PAGE
1862	Osbond v. Meadows ..	31 L.J., M.C. 238; 12 C.B., N.S. 1079; 6 L.T. 290; 10 W.R. 537	13, 153
1859	Parr v. Winteringham ..	28 L.J., Q.B. 123; 1 El. & El. 394; 5 Jur., N.S. 787; 7 W.R. 288	377
1878	Paul v. Summerhayes ..	48 L.J., M.C. 33; 4 Q.B.D. 9; 39 L.T. 574; 27 W.R. 215	5
1882	Pearce v. Scotcher ..	92 B.D. 162; 46 L.T. 342; 46 J.P. 248	396
1894	Penwarden v. Palmer ..	10 T.L.R. 362	209
1898	Phillips v. Stephens ..	79 L.T. 280; 62 J.P. 789 ..	269
1890	Philpot v. Bugler	54 J.P. 646	209
1888	Pochin v. Smith	52 J.P. 4	64
1899	Powell v. Kempton Park Racecourse Company	66 L.J., Q.B. 392; A.C. 143; 80 L.T. 538; 47 W.R. 585; 63 J.P. 260	390
1840	Quarman v. Burnett ..	9 L.J., Ex. 308; 6 M. & W. 499; 4 Jur. 969; 55 R.R. 717 ..	371
1865	Read v. Edwards	34 L.J., C.P. 31: 17 C.B., N.S. 245; 11 L.T. 311	105
1867	Reg. v. Battle, Sussex ..	36 L.J., M.C. 1; L.R. 2, Q.B. 8; 15 L.T. 180; 15 W.R. 57; 8 B. & S. 12	351
1872	Reg. v. Cornwall Justices	*See* Jenkin v. King	191
1878	Reg. v. Critchlow ..	26 W.R. 681	204
1866	Reg. v. Grey	35 L.J., M.C. 198; 1 L.R.Q.B. 469; 12 Jur. N.S. 685; 14 L.T. 477; 14 W.R. 671; 6 B. & S. 65	399
1887	Reg. v. Muirhead ..	51 J.P. 761	285
1839	Reg. v. Nickless	8 C. & P. 757	172
1855	Reg. v. Pratt	24 L.J., M.C. 113; Dears C.C. 502; 3 C.L.R. 686; 4 El. & Bl. 860; 1 Jur., N.S. 681	153
1886	Reg. v. Smith	55 L.J., M.C. 49; 54 L.T. 431; 50 J.P. 215	361
1859	Reg. v. Thurlstone ..	28 L.J., M.C. 106; 1 E. & E. 502; 5 Jur. 820; 32 L.T. 275; 23 J.P. 565	350
1871	Reg. v. Townley	40 L.J., M.C. 144; 6 L.R., C.C. 315; 24 L.T. 517; 19 W.R. 725	215
1848	Reg. v. Whittaker ..	17 L.J., M.C. 127; 1 Den. C.C. 310; 2 C. & K. 636 ..	172

			PAGE
1813	Rex v. Ellis	1 M. & S. 652	351
1837	Rex v. Fry	2 M. & Rob. 42	172
1814	Rex v. Glover	Russ & R., C.C. 269	169
1837	Rex v. Grice	7 C. & P. 803	172
1829	Rex v. Hodges	M. & M. 341	414
1908	Rex v. Stride	77 L.J., K.B. 490; 1 K.B. 617; 89 L.T. 455; 72 J.P. 93; 24 T.L., R. 243	194, Appendix
1872	Richardson v. N.E.R. Co.	41 L.J., C.P. 60; L.R. 7, C.P. 75; 26 L.T. 131; 20 W.R. 461	119
1877	Rogers v. St. German's Union.	35 L.T., N.S. 332	357
1901	Saffery v. Mayer	70 L.J., K.B. 145; 1 K.B. 11; 83 L.T. 394; 49 W.R. 54; 64 J.P. 740	385
1884	Sanders v. Teape	51 L.T. 263; 48 J.P. 757 ..	100
1888	Saunders v. Pittfield ..	58 L.T. 108; 52 J.P. 694 ..	86
1867	Savage v. Madder ..	36 L.J., Ex. 178; 16 L.T. 600; 16 W.R. 910	382
1838	Scarfe v. Morgan	7 L.J., Ex. 1; 4 M. & W. 270; 1 H. & H. 292; 2 Jur. 569; 51 R.R. 568	372
1833	Scarth v. Gardener ..	5 C. & P. 38	272
1900	Sherrard v. Gascoigne ..	69 L.J., Q.B. 720; 2 Q.B. 279; 82 L.T. 850; 48 W.R. 557	83, 336
1890	Shoolbred v. J. J. St. Pancras.	59 L.J., M.C. 63; 24 Q.B.D. 346; 62 L.T. 287; 38 W.R. 399; 54 J.P. 231	283
1876	Smith v. Cook	45 L.J., Q.B. 122; 1 Q.B.D. 79; 33 L.T. 722; 24 W.R. 206	372
1886	Smith v. Hunt	54 L.T. 422; 50 J.P. 279 ..	85
1891	Smith v. Andrews ..	2 Ch. 678; 65 L.T. 175	396
1900	Stanton v. Brown ..	69 L.J., Q.B. 301; 1 Q.B. 671; 48 W.R. 333; 64 J.P. 326 ..	84
1900	Stead v. Tillotson	69 L.J., Q.B. 240; 48 W.R. 431; 64 J.P. 343	407
1901	Stead v. Nicholas ..	70 L.J., K.B. 653; 2 K.B. 163; 85 L.T. 23; 49 W.R. 522; 65 J.P. 484	400
1901	Stiff v. Billington	84 L.T. 467; 49 W.R. 486; 65 J.P. 424	156
1902	Stoddart v. Hawke ..	71 L.J., K.B. 133; 1 K.B. 353; 85 L.T. 687; 50 W.R. 93; 66 J.P. 68	392

			PAGE
1909	Stow v. Blustead	25 T.L.R. 546	190
1882	Swanwick v. Verney ..	45 L.T. 716; 30 W.R. 79; 46 J.P. 613	409
1893	Tatham v. Reeve	62 L.J., Q.B. 30; 1 Q.B. 44; 67 L.T. 683; 41 W.R. 174; 57 J.P. 118	385
1847	Thomas v. Fredericks ..	16 L.J., Q.B. 393; 10 Q.B. 775; 11 Jur. 942; 74 R.R. 502 ..	330
1908	Thomas v. Day	24 T.L.R. 272	384
1901	Threlkeld v. Smith ..	70 L.J., K.B. 921; 2 K.B. 531; 85 L.T. 275; 50 W.R. 158	344
1896	Thwaites v. Couthwaite ..	65 L.J., Ch. 238; 1 Ch. 496; 74 L.T. 164; 44 W.R. 295; 60 J.P. 218	383
1875	Turner v. Morgan.. ..	44 L.J., M.C. 161; 10 L.R.C.P. 587; 33 L.T. 172; 23 W.R. 659	189
1809	Vere v. Lord Cawdor ..	11 East 568; 11 R.R. 268 ..	106
1865	Veysey v. Hoskins ..	34 L.J., M.C. 145; 11 Jur. N.S. 737; 12 L.T. 303; 13 W.R. 652	171, 172
1810	Voules v. Miller	3 Taunt 137	18
1824	Wallace v. Woodgate ..	1 C. & P. 751; R. & M. 193 ..	375
1825	Walpole v. Saunders ..	7 D. & R. 130	379
1875	Watkins v. Major	44 L.J., M.C. 164; 10 L.R.C.P. 662; 33 L.T. 352: 24 W.R. 164	206
1878	Watkins v. Price	47 L.J., M.C. 1; 37 L.T. 578; 27 W.R. 692..	318
1878	Watkins v. Smith.. ..	38 L.T. 525; 26 W.R. 692; 42 J.P. 68	203, 205
1827	Weller v. Deakins ..	2 C. & P. 618	379
1877	Westmoreland (Earl of) v. Southwick and Oundle.	36 L.T., N.S. 108	359
1908	Williams v. Midland Railway Co.	77 L.J., K.B. 157; 1 K.B. 252; 98 L.T. 81; 24 T.L.R. 170	117
1843	Wilson v. Brett	12 L.J., Ex. 264; 11 M. & W. 113; 63 R.R. 528	371
1898	Woolf v. Hamilton ..	67 L.J., Q.B. 917; 2 Q.B. 337; 79 L.T. 49; 47 W.R. 70 ..	389



CHAPTER I

SPORTING RIGHTS APART FROM OCCUPATION

SPORTING rights of any description constitute what the law calls "incorporeal hereditaments," and as a result they can only be granted or assigned by deed; that is, by a document which contains proper words of grant, and which is sealed as well as signed. But although sporting rights, when granted separately from and independently of the land over which they are to be exercised, can only be granted by deed, they can be reserved by a landlord to himself on a letting of the land,

whether such letting is effected by agreement in writing or verbally. (The Game Act, 1831, sec. 8; Jones v. Williams, 1877.)

To take a simple example: A., the owner of land in his own occupation, enters into a written agreement, *not under seal*, with B. to give him the right of shooting or sporting over the land. This agreement may, as between A. and B., give B. the sole shooting or sporting rights (subject to the Ground Game Act, 1880), but as against third persons B. has in law no such rights; so if A. afterwards lets the land to C. during the existence of the agreement with B., C. can shoot and take game, etc., in the face of B., and B. has no power to prevent him doing so (Barker v. Davis, 1865). [See further chapter XXII as to leases of sporting rights.]

If, however, instead of letting the shooting to B., A. had let the land to him as yearly tenant, and expressly reserved to himself the right of entering to kill game, etc., such agreement, even though made by word of mouth only, would have given A. the sole right to game, etc. (subject to the Ground Game Act), and A. would be able to prosecute B. for trespass if B. killed any game other than as authorised by the Ground Game Act.

It will be as well at this point to define the word "game," as it must be so frequently used. The Game Act, 1831, defines game as including "hares, pheasants, partridges, grouse, heath or moor game, black game, and bustards," and such may be taken to be the common definition in England, and the one referred to wherever the word game is used in these pages, unless otherwise stated. In Scotland, in the statutes relating to the killing and taking of game, ptarmigan are included in the

definition (13 Geo. III. c. 54), and in Ireland landrail, woodcock, snipe, quail, wild duck, widgeon, and teal (27 and 28 Vict. c. 67), though as regards the provisions affecting dealers in game, the definition above set out is in force throughout the United Kingdom. (See "Oke's Game Laws.") In England, too, in the Game Licence Act, 1860, and the Poaching Prevention Act, 1862, the word is used with a wider meaning; but it will be better to refer particularly to such extended meaning when occasion requires, and the reader may assume that the term game has the signification mentioned above for England, unless the contrary is stated.

"Ground Game" is defined in the Ground Game Act, 1880, as meaning hares and rabbits. The rights of occupiers under this Act will form the subject of future chapters, and in now dealing with some of the points of interest arising under agreements and grants, it must be remembered that the rights conferred are subject to the inalienable rights of the occupiers under such Act.

Broadly speaking, every occupier of land has, as incident to his right of occupation, unless he or one of his predecessors in title has entered into an express agreement to the contrary, the right, and the exclusive right, to take and kill the wild birds and animals on the land he occupies, such right being annexed to the soil over which it is exercised. We leave out of account certain exceptional cases, as where the right of sporting over a defined area has in times past been the subject of a Crown grant, and so become a franchise separate and distinct from the ownership of the soil, also the rights acquired in certain instances by lords of manors under

Inclosure Acts and Awards. These exceptional cases are of rare occurrence, and need not be here further referred to.

We have said wild birds and animals without any limitation to game, because the exclusive right of taking and killing embraces a sparrow as well as a pheasant, and a hedgehog as well as a hare. There may be, again, a further exception to this general statement, as there are legal authorities to support the contention that a trespass in hunting and following ravenous beasts of prey, such as foxes, badgers, etc., already started on another's land is justifiable. That fox-hunting was perfectly lawful, and that anyone had a right to follow a pack of hounds over another's land was, until recent years, one of those "well-known facts" (so called) which everybody knew, and yet which was absolutely the reverse of the truth.

When once any legal idea has become instilled into the non-legal mind, it often takes generations to eradicate it. So it was with the "common fact" as to fox-hunting. As late as 1786 a case was tried in the King's Bench Court, in which it was gravely asserted by the defendant, who was sued for trespass in hunting with others over certain land, that he and his friends had gone out fired with the laudable intention of pursuing and killing one of "those destructive and hurtful vermin and beasts of prey naturally inclined to do mischief, called foxes," solely to hinder and prevent the same from doing mischief in the neighbourhood, and that such was the only method of killing them. This was held to be a good plea, and the plaintiff failed in his action of trespass.

It has often since been held, however, that although one may, perhaps, justify following a fox or other noxious animal over another's land, there is absolutely no shadow of an excuse for a concourse of horse or foot men to follow hounds over anyone's land without permission; and the judges have been careful in recent years never to commit themselves so far as to say that there is even any limited right of pursuing vermin which has been started on one man's land and followed into another's. Thus in 1878 it was expressly decided that a person out with fox-hounds *for the purpose of sport* is not entitled to go over land without the consent of the occupier (Paul v. Summerhayes, 1878).

Although, as before mentioned, the right of killing wild birds and animals is annexed to the soil, there is, in law, no property in such things whilst alive and free. They belong to no one until they are dead or captured, and herein they differ from domesticated fowls and animals. Although no one can justify killing a bird, or a hare, or a rabbit, on or over another's land, still, at common law apart from statute, to do so was not a punishable offence. The offender might be sued at law for more or less nominal damages for the trespass, but that was in no way a deterrent to the ordinary poacher, who, of course, had nothing to lose, if sued. In consequence, therefore, various Acts were from time to time passed creating new criminal offences in relation to the pursuit and taking of game. What is the effect of the existing Acts which deal with such offences will be considered in later chapters. We are now dealing only with the property in game and other wild birds and animals.

We have said that there is no property in live game, etc., while at large, and, as a general rule, the property in dead or captured game vests, upon its being killed or taken, in the person having the right of sporting on the land on which it is killed, *i.e.*, as a general rule, the occupier; so if a trespasser kills or takes any game, etc., on your land, which he has found there, and not followed from someone else's, you may, apart from any statute, go up and demand it from him; and if he refuses, take it from him by force, even to the extent, if necessary, of knocking him down. Be sure, however, before proceeding to such extremities, that so much force is necessary to effect the desired object, or you may find yourself before the local Bench, a defendant instead of a prosecutor. Such a delicate point as this, however, is hardly likely to be considered on the spur of the moment by the irate gamekeeper who has caught a poacher red-handed; he will, more usually, apply his mind to the problem "*Can* I knock him down?" than to the problem "*May* I legally do so?"

Although there is no absolute right of property in live game, etc., yet there is a so-called special right of property, such that if a man starts any game, etc., on his own land, and kills or takes it whilst on or over another's, the property in the thing killed or taken will remain in him. A man has, however, no *right* to follow game on to another's land and kill it there, and in so doing he will certainly be committing a common trespass, if not a trespass in pursuit of game; a point which will be considered when we come to deal with offences against the game laws.

If a third person, however, even a trespasser, start any game, or other wild animal, in A.'s land and follow it on to B.'s, and there kill or take it, the property in it will not vest in A., because he did not follow it, nor in B., because it was not started on his land, and therefore it belongs to the trespasser, although he may be liable to an action for trespass from both A. and B., and also be liable to be prosecuted for a trespass in pursuit of game (see the case of Blades v. Higgs, 1865).

When coursing or hunting with harriers or beagles, it is often customary to give hares that are killed to the occupiers of land on which they are taken; but this is a matter of courtesy only, and not of right, unless the hare was started and killed on the same man's land; for the actual ownership of a hare that has been started on one man's land, and killed (or taken alive) on another's, is in the person having the management of the hunt at the time (Churchward v. Studdy, 1811).

Occasionally it happens that a labourer is able to take a spent hare right in front of the hounds. Assuming the hare was started on a farm other than that on which she was taken, then the question whom she belongs to turns on what was the labourer's intention. If he took her for the benefit of the huntsman, and hands her over to the latter to be killed, she belongs to the huntsman; but if he caught the hare in order to spite the hunters, she is the property of the labourer. If, on the other hand, the hare is killed on the same farm as that on which she was started, she does not become the property of the huntsman, nor, in the case last instanced, of the labourer, but of the farmer or the person having the sporting rights over the farm.

Nice little questions as to the ownership of game sometimes arise on shooting the borders of one's preserves, and this quite apart from any question of trespass, and heated disputes are often carried on over the shooting luncheon as to whether such and such a bird, which has found its way into the game cart, really belonged to Mr. A., the host, or to his neighbour over the hedge, Mr. B.

To give a practical example, one of Mr. A.'s guests says he shot a pheasant and it fell on Mr. B.'s land, and old Sharpsite, B.'s keeper, who was watching to see that none of his pheasants were killed, calmly picked it up and walked off with it. Could he go round to old Sharpsite and claim the pheasant as Mr. A.'s property? Guest No. 2 says "that depends on whether it was dead when the keeper picked it up." Guest No. 3 says "no, it doesn't; it all depends on whether it was dead when it struck the ground;" whilst Guest No. 4 doesn't pretend to know much about it, but thinks that if the question depends on when the bird died, the time to consider would be when it crossed over the boundary, was it flying then, or was it dead and simply falling?

After each of the three has advanced arguments in favour of his particular theory, Mr. A., who has been listening in silence, but with evident amusement, to what at times seemed to be an unnecessarily heated debate, turns to the only other silent member of the party, observing, "Perhaps Mr. Six-and-Eight will give us his opinion on the point."

Whereupon the "learned friend," with the caution instilled into him by his legal training, replies that the point is by no means an easy one to decide, and, as far

as he remembers, it has never been before the High Court—at least, he thinks there is no reported case—but he continues, "I should say that if the bird was dead when the keeper picked it up, there is no doubt it is your property, A.; if it was only tipped in the wing, and would have got away if the keeper had not been exactly on the spot and been too quick for it, or if it required the keeper's dog to catch it, I should say it belongs to B. If not quite dead when Sharpsite picked it up, but mortally wounded, it's rather doubtful whom it belongs to, but I think it's legally your bird." Then after delivering himself of this opinion, the supposed oracle relapses into silence again, but is forthwith summoned from his reverie touching the respective merits of beef-steak pie and bottle beer, as against partridge and champagne, as an ideal lunch for a sportsman, with the remark, "That's all very well, old chap, but what are your reasons for your verdict?" "My reason," is the reply, "is that, in order to acquire a property in such things as game, you must, as we lawyers say, 'reduce them into possession.' It is a popular fallacy to suppose you must absolutely kill them; if you catch a bird alive, or if you so far wound it that it can't get away, but you can at any moment go and pick it up, then you have reduced it into possession; and, therefore, if the bird was so wounded when B.'s keeper picked it up that it couldn't have run away, the bird was A.'s; but if it was a runner, and so would have required a dog to get it, it belonged to B." And then the conversation turns on whether the bird was a runner or not, and as guest No. 1, who shot it, won't admit that it was a runner, and no one else having seen the shot can contradict him, it is

unanimously resolved by the non-legal guests that old Sharpsite has stolen the pheasant, and ought to be prosecuted. On the question being put to the legal member of the party whether that couldn't be done, he drily remarks, "Yes; if you can prove a felonious intent," and refuses to be further drawn on the subject.

Runners, too, give rise to many discussions amongst shooters. Is it justifiable to send your retriever after a runner on to another man's property? It seems clear that in any case a man will be committing a trespass if he wilfully sends his dog after a runner, or a wounded hare or rabbit; but, apart from the trespass, the game, when retrieved, should belong to the shooter—at least, if it were followed by the dog at once—and so, if A.'s keeper goes round the day after his master's shoot to pick up lost birds, and his dog follows a runner from his master's wood over the boundary and retrieves it there, the bird, it is concieved belongs to A., although the latter might be subject to an action of trespass if his keeper actually sent the dog across the boundary. On the other hand, if A.'s keeper saw a wounded bird not on A.'s land, but on the neighbour's, A. would have no right to it if the dog retrieved it, however certain he might be that it was one of those shot on his own shoot the previous day.

CHAPTER II

BOUNDARY FENCES



NOTHING, perhaps, creates more discussions and disputes between sportsmen than questions arising out of rights to boundary fences, and to game which rise from boundary fences, or are picked up there; and we may perhaps be pardoned if we enlarge a little on the law relating to the ownership of boundary fences, so closely connected is it with the practical exercise of sporting rights.

Let us illustrate by an example. A. owns a farm, one of the boundary fences of which is honeycombed by rabbits. The fence is his, as the ditch is on neighbour B.'s side, and it has been allowed to become very overgrown by A. A. claims the land on B.'s side for the space of four feet from the hedge, which is frequently accepted as the law of the land, though no express legal authority can be found for this proposition. According to measurement, this four feet includes the brow of the

ditch, and it is A.'s custom to double this fence, or, in plain English, to walk on B.'s side of the ditch, much more frequently than B. either approves of or appreciates.

One morning A., as usual, is doubling this fence with his keeper on the home side. The fields on both sides of the fence contain a good root crop, affording excellent cover for game. Presently A. flushes a covey of French partridges, which have run into the hedge whilst A. was beating his own field. Some rise from the ditch, some from the brow, and some from B.'s roots. A. is a good pigeon shot, and drops one on the brow and another in B.'s roots. He is congratulating himself on his successful right and left, when up comes Mr. Sharpsite, B.'s keeper, and an altercation ensues. Sharpsite has been in hiding in the lane ahead, which dips below the level of the field, and accuses A. of shooting birds rising from B.'s roots; also of being on B.'s ground, strenuously asserting that his master will prosecute him. A. replies in some warmth that he is walking on his own land, that he killed each bird whilst it was in the air over his own land, and that possibly from the angle at which Sharpsite was looking he might have thought otherwise. His dog retrieves the bird which fell on the brow, and Sharpsite, not to be done, secures the other from B.'s roots. A. accuses Sharpsite of stealing his bird, and angry words follow each other in rapid succession, which bring A. on the following market day to the offices of Mr. Six-and-Eight.

The case is a simple one. The birds were clearly A.'s property, as they were both killed by him when in the air over his own land. Had he gone on B.'s land to pick up the dead bird he might have been guilty of a common trespass, though probably if a request were first

made to B. or his keeper to hand over the dead bird or to allow A. or his keeper to go and get it and not complied with A. would not at the present day be mulcted in damages in an action for trespass. Had the second bird been over the land of B. at the time he fired his shot, the bird would have belonged to B., and A. would, in the mere act of shooting, have been committing a common law trespass, although he stood upon his own land, and if he had afterwards gone on to B.'s land to pick it up he would have been guilty of a trespass in pursuit of game, as has been laid down in the case of Osbond v. Meadows (1862).

In case any reader should have concluded from the foregoing that we implied a man has a right to walk on his neighbour's side of a boundary fence, we hasten to assure him that such was by no means our intention, and to state that, as a general rule, no such right exists. That such a right is supposed by a great number of sportsmen to exist we well know. The average sportsman, at any rate, thinks that if the ditch is on the opposite side of the hedge to the land over which he has the shooting, he has not only a right to everything found in the hedge and ditch, but also a right to walk along the brow of the ditch to flush the birds in the hedge. In practice, such a thing is commonly done, and common practice is often pleaded in support of a supposed right. But if Mr. A. does not object to Mr. B. doing this when having a border day, it is probably either because Mr. A. also thinks Mr. B. has a right to do it, or because Mr. A. does the same thing himself at a different part of the estate, where the ditches lie on the other side of the hedges.

But what does the law say on the point?

"Where two estates belonging to different owners are separated by a hedge and a ditch, the presumption, in the absence of evidence to the contrary, is that both the hedge and the ditch belong to the owner of the land on the opposite side of the hedge to which the ditch is" (Guy v. West). The presumption is the foundation of the supposed right above alluded to. This, however, is only a presumption, and, if evidence to the contrary is adduced, as, for instance, that the occupier of the land on the ditch side has always cut the hedge or cleaned out the ditch with the knowledge and acquiescence of the owner of the land on the other side of the hedge, the presumption is negatived. It is not sufficient to negative the presumption to prove simply that the owner or occupier of the land next the ditch has exercised acts of ownership over the hedge and ditch ; it must be proved also that the owner of the land on the other side was aware that his neighbour had done so (Henniker v. Howard, 1904). It is not often, however, that such evidence is forthcoming in the case of a clearly-defined hedge and ditch; in fact, in ninety-nine cases out of a hundred, the evidence to be derived from the exercise of rights of ownership, such as acts of cutting and cleaning, is the other way. It may, therefore, be taken as a good rule of thumb that the ditch goes with the hedge, and the hedge goes with the land on the opposite side to the ditch. But it is frequently thought—and we have heard this opinion expressed lots of times by people whom we have thought ought to know better—that the owner of the hedge is entitled to so many feet of land from the stub of the fence or from the extremity of the bank on which the hedge is planted. Sometimes it is said that the right is to six feet from the point of the bank on

which the hedge is to the brow of the ditch, but more often to a four feet ditch, and yet this fallacious idea has been disposed of, as far as lawyers are concerned, for upwards of eighty years.

We well remember, years ago when we were articled, an old and much respected client of our principal's coming to see him on this very point. We were privileged to sit in the principal's sanctum, and were present at the interview. The client, Mr. Upperton by name, was a large landowner and a county magistrate, chairman of Quarter Sessions, and altogether a man of considerable importance—a fact which no one knew better than himself. His usual deportment carried an ostentatious dignity becoming his position (as he no doubt thought); but on the morning in question this serenity was absent, and almost before my principal had greeted him he burst out with: "I've been insulted; terribly insulted, and by a man whose father used to black my father's boots. Such insolence as I've received is not to be borne, and I've come to you to put a stop to it, Mr. Erudite."

He was going on with his tirade when Mr. Erudite interrupted him.

"Quite so, my dear sir; but who is it who has insulted you, and what has he done?"

"Oh, really, I beg your pardon, I forgot myself for the moment," replied the client. "Well, you know my land joins Mr. Carrots', the curious old gentleman who wears a wig; but it's not of him I complain—he's quite a harmless individual—but of that rascally tenant of his, Stingiman. A month ago I was shooting my boundaries, and I sent my keeper to double the fence

between my land and Carrots'—the ditch is on Carrots' side, you must know—and, of course, the keeper walked along on the brow of the ditch. And that man Stingiman had the impudence to come and order my keeper off his field. Such insolence I never heard in my life—as if I, or my man, hadn't a perfect right to walk along the edge of the ditch. To show that I took no notice of the man, I told off a beater to walk backwards and forwards along the banks of all the ditches adjoining Stingiman's land for half an hour. And all the while the insolent fellow—Stingiman, I mean—stood there and threatened to have the law of me."

Mr. Upperton delivered himself of this speech with great rapidity. As he paused for breath, Mr. Erudite uttered an interrogative "Yes?" as if expecting the story wasn't finished.

"And this morning," continued the client, after he had recovered himself, "I was again shooting the borders, and this time I went myself to walk along the brow of the ditch, and—would you believe it?—the impertinent fellow came and ordered me off; and when I took no notice of him, treating him with the silent contempt he deserved, he threatened he would himself turn me off—of which I also, of course, took no notice. Well, then the confounded fellow seized me by the scruff of the neck and pushed me violently—almost threw me, in fact—into the ditch"; and Mr. Upperton paused again.

Mr. Erudite, with all his profound learning, had a keen sense of humour, and we could see by a twitch of his lips and a peculiar twinkle in his eye to which we were well accustomed, that the spectacle of the dignified magistrate being pushed into a ditch, and that, withal, by the son of a

man who had been "odd man" to Mr. Upperton's father, was affording him intense amusement, though he politely stifled a smile with the remark, "Dear me, you don't say so." As for ourselves, an audible giggle, which would have been the signal for instant dismissal from the room, was only checked by the exercise of great muscular power, which produced a short fit of coughing instead. We had just recovered from it when Mr. Upperton proceeded:

"But even that's not all. The fellow seized my gun, which I had let fall on the bank, and threw it over the hedge, and then stood in front of me and said, as I got up and attempted to get out of the ditch, 'No you don't. Now you're on your own land, you can keep there. You just go back over the hedge, or I'll put you over.' And—er—and—well, to make a long story short, I—he's a big, powerful man, you know, Mr. Erudite, and I hadn't a keeper near, and—er—and—I had to do it."

This proved too much for us, not having then acquired the command of our feelings which years of training had given to our principal; it was all we could do to slip out of the room and close the door before we exploded with laughter. As we retired, we caught fragmentary words of Mr. Upperton's, "Never before. . . . Gross indignity . . . infamous . . . substantial damages." We had retired into the outer office, and were busy narrating to the managing clerk Mr. Upperton's adventure, when we were summoned by our principal, and requested to get from the office library Volume III. of "Taunton's Reports." As we returned with the book, Mr. Upperton was speaking:

"But do you really mean to say, my dear sir, that the idea I've cherished from my boyhood, that I got from my father, and he from his father before him, that the owner

of a hedge is entitled to four feet in width from the far side of the hedge is fallacious? And this ditch, remember, was only a bare three feet wide—I had it measured carefully. Why, I and my father before me have always had the fence cut and the ditch cleaned out, and the men have always gone on Mr. Carrots' land for the purpose."

"That may be, Mr. Upperton," replies our principal, "but I am sorry to say that I must dispel your illusion. See, here is a case, decided in the year 1810 (Vowles v. Miller), in which one party pleaded as you do, that he was entitled to four feet from the bank on which his hedge stood, and Mr. Justice Lawrence laid down the law thus: 'The rule about ditching is this: No man making a ditch can cut into his neighbour's soil, but usually cuts to the very extremity of his own land. He is, of course, bound to throw the soil which he digs out upon his own land, and often, if he likes, he plants a hedge on the top of it: therefore, if he afterwards cuts beyond the edge of the ditch, which is the extremity of his land' (note those words, please) 'he cuts into his neighbour's land, and is a trespasser. No rule about four feet has anything to do with it.' That case, my dear sir, has been quoted as law ever since 1810."

"Then you mean to say," said Mr. Upperton, "that my boundary ends with the edge of the ditch?"

"Quite so," replied Mr. Erudite. "In the absence of proof to the contrary, which you cannot give, your boundary is the edge of the ditch as it was first cut when the fields were separated, and you must assume that that was the same as the edge of the ditch at the present day, unless the contrary is proved."

"But, but," said Mr. Upperton, evidently nonplussed,

"my men go on that fellow's land to cut the hedge and scour the ditch, and surely if they have a right to go, I have!"

"Hardly so; you have no doubt acquired the right to go on the land for the purpose of cutting the hedge and scouring the ditch, or it may be that Mr. Carrots has a prescriptive right against you to have the fence kept up, and then you certainly would have the right to go on his land to cut and repair it; but that doesn't give you a right to go on the land for any other purpose. Of course, you might walk down the bed of the ditch, but you musn't go beyond the further edge. In short, I'm afraid I must say you were trespassing on Stingiman's land."

"Well, then, I must confine myself to obtaining satisfaction for the brutal outrage committed on me. Do you recommend a summons for assault, or an action for damages?" said Mr. Upperton. "I think the fellow has money to pay with," he added.

"I can't I am sorry to say, recommend you to pursue either course," said our principal; "I grieve to have to advise you so, but I really don't see that you have any cause of action. You were undoubtedly trespassing, however unwittingly, and the man requested you—in a most ungracious manner, it's true, but still, he requested you—to leave, and, as you know, my dear sir, if a trespasser refuses to leave, he may be ejected, and such force may be used as is necessary."

"But the blackguard refused to let me get out of the ditch. Isn't that false imprisonment? I've committed a man for doing as little—on your advice, too, Mr. Erudite." (Our principal was clerk to the bench of magistrates, of whom Mr. Upperton was one.)

"No; there again I must be against you, Mr. Upperton. If you had left of your own accord, I think you might have been justified in walking back the way you came, but as you were near the boundary of your land when Stingiman laid hands on you, he was perfectly justified in pushing you across your boundary into the ditch, and having got you there, he was justified in refusing to let you come on his land again. You might, it is true, have walked along your ditch, but you chose to get over the hedge instead. If you had wished to go along the ditch, and Stingiman had prevented you, you might have had an action; but as it is, you haven't, my dear sir, I'm afraid, a leg to stand on."

"Then, Mr. Erudite, I must let the matter drop, though I'm not sure that I shan't be the laughing-stock of the county. As I can't make the fellow suffer for his insult by law, I will go at once and request Mr. Carrots to turn him out of his farm; to give him notice to leave next Michaelmas."

"My dear sir," replied Mr. Erudite, "pray don't do any such thing. I know Mr. Carrots well, and he's such a meek little man he would not think of turning his tenant out; he would say how sorry he was, but he really didn't like to offend Stingiman. Besides," added our principal, with a suspicion of a smile, "as I daresay you know, Mr. Carrots, with all his meekness, is a regular old gossip, and to tell him of your misadventure would be like telling it to a ladies' working party or Dorcas meeting, or whatever they call them."

"Good morning," and Mr. Upperton walked out with a most disconsolate air.

"How are the mighty fallen!" remarked our principal,

after the client had left. "It's quite certain that he will be the laughing-stock of the whole district, if not of the county,"—and so he was, as we can vouch for.

Where there is no ditch at all, or where there is a ditch on each side of the hedge, there is no presumption of law, and if it cannot be shown to whom the hedges and ditches originally belonged, the ownership is proved by the exercise of the acts of ownership, such as cutting and clipping the hedge, repairing gaps, and cleaning the ditches. Whoever has exercised these acts of ownership for an unknown length of time can claim the ownership. It often happens that half the length of a hedge bounding a field belongs to the land on one side, and the other half to the land on the other. We have in mind now a hedge not a hundred yards long dividing two small fields; to about a third of the way down it is cut by the owner of one field, and the remainder by the owner of the other.

A point was once mooted to us as to the ownership of a bird found in the middle of a hedge at a corner where four different properties met; and it was suggested that each of the occupiers of the four fields had an equal right to the bird. This suggestion was founded on the fallacy of supposing that there was a certain amount of common ground at the corner of the four estates, whereas in theory the boundary line of each estate would be an indefinitely narrow line, and the only difficulty in practice would be to locate this line. Only in the event of the four lines exactly meeting at one point, and the bird being found precisely over that point, could there be a claim to mutual ownership. This should be always kept in view, that the boundary

between two properties is, as a rule, a line in the mathematical sense of the term. We say as a rule, for a fence may be common property between two lands just as a wall between two houses may be a party wall. The fact of such common ownership is evidenced by both parties cutting it, turn and turn about, or each paying half the expense of cutting. In such case, the game in the fence belongs to one equally as much as to the other, and whoever kills it or secures it first is entitled to it. Either party, for instance, may catch a runner or a wounded rabbit or hare in such a fence, whichever side it was shot on.

The cases quoted in this and the preceding chapter should show the legal principles to be applied under most circumstances likely to arise. To the lawyer the difficulty, as we have hinted, in all cases of boundary fences lies not so much in the application of the law as in the decision of the *question of fact*—where is the exact dividing line? And the frequent doubt there is as to this, coupled with a want of knowledge on the part of the average sportsman of the legal principles to be applied, brings about many a dispute between neighbours.

But it is always best to avoid such possible unpleasantness if you can by personally interviewing your neighbours, and having a definite understanding with them upon all the boundaries to your beat, meeting one another fairly upon the give-and-take system, and conducting your shooting upon mutual principles for the furtherance of your sport, for the preservation of your game, and for your advantage and good fellowship, remembering the old saying that "Hunting makes friends and shooting makes enemies," the truth of which latter assertion, we very much regret, we are reluctantly compelled to admit.

CHAPTER III

RIGHTS ON FOOTPATHS



"WELL, Timothy, and what's the trouble this morning?" we remark, as a client of rather doubtful character is ushered into our presence.

"Lor, sir, I've been houtraged, most vi'lently assaulted, and I want the law o' Squire Broadacres. See here, sir," and Timothy Tattler, ratcatcher by name and poacher by occupation, pulled up the ragged sleeve of his coat and showed an ugly bruise upon his forearm. "But that ain't half all," he added, with a self-condolent whimper. "Oh, my back and chest and legs—how they do ache! And see here—"

But as we could not fail to observe that it was the intention of our client to disrobe for the purpose of the

better exposing his bodily scars and bruises, we immediately stopped him in the middle course and inquired how, when, where, and by whom the alleged assault was committed.

As he continued to undress, despite our entreaties, we were compelled to impress upon him in the most forcible manner we could, the distinction between the professional services rendered by a legal adviser and a medical adviser; after which, by dint of cross-examination, we elicited the fact that he had been run rather forcibly along a public footpath through the land of Squire Broadacres, and his attendants the while, either from accident or malice aforethought, had omitted to notice a small stile, over which they had all fallen; but by a remarkable coincidence, they did not receive any injuries, whereas Tattler did; and, as we added, "*Hinc illæ lachrymæ.*"

"I don't know wot you mean by that; but wot am I a-going to get out of this 'ere job? That's wot I want to know. The Squire's a rich 'un, and can afford to pay, and I ain't a-going to let 'im off for nothing. Now, I think a 'pony' about fair. But wot do you advise, sir?"

"Wait a bit, my friend," we interrupt; "you have not told us the motive these rugged hirelings of the Squire's had for sending you along the footpath in such a hurry. Where was it, and when was it?"

"Well, sir, it 'appened yesterday, and you know the place as well as I do. It was on top of the Bloodmoor Hills, just after you pass Cromwell's Wood."

"Oh, it was on Sharpsite's beat, was it? That accounts for much," and we smiled knowingly to

ourselves. "But yesterday was Tuesday. Wasn't the Squire shooting?"

"Yes, sir; but wot 'as that to do with it? Haven't I as much right to walk along the footpath as you or anyone else?"

"That all depends upon whether you were using the pathway for a purpose other than that of passing and repassing, as the Court of Appeal held in a prominent case only a few years ago."

"But, really, sir, I—I—"

"Yes, yes," we rejoin, rather testily (knowing our man), "I suppose the real truth is that you knew the Squire and his party of friends were lining the Whitethorn fence from Cromwell's Wood to the sandpit, and that Sharpsite and his beaters were sweeping all round the wood and over the Bloodmoor Hills towards them; and just because the Squire made that order for ejectment against you last week, you thought you would be even with him by spoiling his sport. And a very easy thing to do at the place you have named."

"But I didn't do it, sir," he put in apologetically.

"No, because Sharpsite was one too many for you, and tumbled to your game before it came off."

"No, sir; it wasn't Sharpsite, but the Squire. 'e ordered two o' 'is men to run me off into the high road, and I got 'urt. Surely—"

"Were you walking peaceably along the footpath, or loafing about?"

"Well, I was *more or less* walking."

"How long had you been there?"

"Some time, maybe."

"What had you in your hand? Come, now, it's no good telling me half the tale."

"Well, sir, I 'ad a stick, and my 'andkerchief was out of my pocket."

"Yes, and on the stick, I suppose?"

"Well—er—yes, sir."

"Then the Squire was within his rights to run you off."

"But not off a public footpath. Surely, sir, if I can't 'ave the money, I can summons 'is men for assault?

"Now, that's just where the rub comes in," we say, smiling benignly on him to soothe his troubled feelings; "and apparently the Squire knows the law books as well as we do, or possibly he may have been advised," we slyly added; "who knows? The law on the matter is very clear, and there is a recent case of Harrison v. the Duke of Rutland, which is analogous to your own. Here it is," and suiting the action to the word, we reach down a volume of the "Law Journal Reports" for 1893. The facts in that case were as follows: Land on both sides of the highway belonged to the Duke of Rutland. One day, when the Duke and his friends were shooting over the moors, a person, whom we will call B., went on to the highway for the express purpose of preventing birds that were being driven towards the butts from crossing the highway. The Duke's keepers asked him to desist, and, upon his refusal, held him on the ground until the drive was over. The Court of Appeal (following R. v. Pratt 1855), held in an action against the Duke and his keepers, that as the soil of the road was vested in the Duke as owner of the adjoining land, and B. was using the highway for a purpose other than that of passing and repassing, he was a trespasser, and the assault was

justified. Judgment was given for defendants on a counter claim for nominal damages, and an injunction would have been granted if it had been applied for."

"But I was on a footpath, and not the road," chimed in Mr. Tattler.

"Quite so; but unfortunately that makes the case all the stronger against you," we reply; "and the best advice we can give is, Don't do it again. Squire Broadacres has carried too many guns for you, and the less you say about it the better it will be for you."

"Yes; we prefer our fee paid now, as it saves the bother in book-keeping. Same as usual. Thank you. And, by the way, we trust you will excuse our examination of a gift horse; but next time you are kind enough to leave a lease of birds, we would esteem it a favour if they were *shot, in preference to* having *broken necks.*

"Good-bye, Mr. Tattler, good-bye!"



CHAPTER IV

FORESHORES—TWO INTERVIEWS

NO. I—1898



D— that man Spider!"

"I beg your pardon, sir."

"I said d—that man Spider, and I mean it. Spider, Samuel Spider, Lord Seaview's keeper. He has violently assaulted me, as well as insulted me, given me my death of cold, and attempted to prevent me exercising my lawful rights as a British subject on British soil."

"Come, come, Mr. Prowler, don't be so hasty in your conclusions; and if you will tell me the whole story from the beginning to the end, I will see whether you are doing Mr. Spider an injustice."

At this our client wriggled himself comfortably into the commodious arm-chair near our office table, crossed his legs, gave vent to several haw-haws, preparatory to commencing a long-winded narration, in which he was most emphatic upon all the points that he considered to his advantage, whilst he barely referred to those points which were decidedly against him.

To give the reader some idea of the pith of this story, we will set out in a short, concise manner, the facts as they were told, cutting off all the fringe and lace edging of our client's comment, explanation, and digression.

On Monday, November 14, 1898, Mr. Prowler, as was his wont, set forth from the small seaport town of Saltwold, accompanied by his favourite poaching water-spaniel "Snip." They walked for several miles along the beach until they came to a promontory, which jutted some considerable way out into the sea. At low water one could easily walk round the promontory, as a considerable margin of beach was left between the cliffs and low-water mark, but at half flood the waves washed the cliffs, and at high water it was quite impossible to effect a passage, unless the assistance of a boat was taken, or it was made by swimming. These cliffs were also unclimbable, and the only other way in which the pedestrian could negotiate the promontory was by trespassing on Lord Seaview's land, which was all most strictly preserved. The public road circled in a seaward direction, near to the top of the promontory, and the great B. P. tried to cut a permanent right-of-way for themselves by a footpath along the cliff, but as Lord Seaview was also Lord of the Manor, and, at best, an obstinate, self-willed individual, the disturbers of his private rights and game

had not experienced a very rosy time of it. Foremost amongst these offenders, and most cordially hated of them all, was our client, Mr. Prowler. He had tried the game before and been worsted, so much so that he had to confine his attacks to harassing him whom he looked upon as the public enemy (Lord Seaview), from that neutral boundary between high and low-water mark where he had found by experience it was safe to roam. To continue the facts. Mr. Prowler, on the morning in question, came to the aforesaid promontory, where he waited the tide, and passed round before the water had actually left the face of the cliff. A mile beyond he planted himself in an oilskin bag (similar in colour to the beach), and lay in ambush upon the damp sand for the restless fowl which passed and repassed from the sea to a private lake of Lord Seaview's, situated some short distance inland.

It was rather a boisterous morning, and sport was brisk. It is needless to add that the noise of this firing soon attracted the attention of Mr. Samuel Spider and his satellites, so that his movements were closely watched by those most interested. The expected soon took place.

Prowler dropped a fowl upon the sand some twenty yards above the mean high-water mark, and, as he (Prowler) argued, well within the mark which limited the wash of the sea at spring tides. A race immediately ensued between Prowler, "Snip," and one of Spider's watchers for the possession of the prize. Prowler got to the bird first through the assistance of "Snip," but the keeper, nothing daunted thereby, demanded the bird, which was indignantly refused. A scrimmage ensued; Prowler sustained a black eye and a bruised shin, lost

his bird, and was laughed at, whereby his dignity suffered. Nevertheless, he returned to his bag-ambush, and waited for further gifts which the gods might send him.

Within an hour he had dropped another fowl, but this time the bird fell farther afield, and the race for possession was consequently more severe. "Snip" seized the bird first, and the watcher seized "Snip," who dropped the bird to go for him. Thereupon the watcher hit "Snip" over the head with his stick, and stretched the dog a corpse upon the beach. Prowler then went for the watcher and added another black eye, with a violent indisposition of the stomach, to his former infirmities, and he was forced to retire crestfallen and vanquished.

The excitement of these encounters had caused the time to slip unheeded, and he was only reminded that he must hasten his departure, or the in-coming tide would not only wash away his oilskin bag and spoils, which lay upon the strand, but also cause fresh disturbances at the promontory.

Sore in body and mind, and with an unquenchable thirst for vengeance raging in his breast, he dragged his weary limbs along the beach, whilst the now triumphant watcher, who had been especially requisitioned to hamper his sport and repulse any invasion of territory, kept a parallel course upon his employer's ground.

After the two encounters, it cannot be wondered at that the pace was slow, and by the time they arrived at the promontory angry waves were washing the base of the cliff, and Prowler saw before him the alternative of a third unwelcome meeting between him and his late

antagonist, or a dangerous passage round the cliff in neck-deep water, with a chance of losing his spoils, if not his own life. Needless to add, he chose the former, without a moment's hesitation.

The watcher was nothing loth to receive him, and anxious to drive him *nolens volens* into the uninviting billows. On arriving at the water mark, which denoted the limit of the neutral ground, Prowler sought to compromise by arguing the question, but with little effect, as his opponent in debate, as also in arms, adhered to the one point, that "his orders were definite, and no Mister Prowler, or anyone else either, was going to trespass on his master's land if he could stop him."

Upon this, Prowler dilated on the rights of the public over the cliffs and along the shore, which only elicited the one word "rats." Then he urged the necessity of the occasion, and with some reason, the danger of his attempting to pass round the promontory, to which the watcher replied that he could go back the way he came from, but as this entailed a walk some ten miles round, whilst the direct path was hardly one, Prowler did not, nor had he any intention of considering that proposition for a minute. No, forward he must go, and forward he meant to go, at all costs.

His first manœuvre was a bolt for it, but here he was outwitted, and ignominously run back again to the neutral ground. Then he attempted force, and again he was worsted. Next he tried bribery and corruption, but without effect, and finally he tried to patiently tire his antagonist by sitting it out; but he had not taken the tide into his considerations, and before he was aware of

it, it had cut off his retreat, leaving him upon that portion of the beach which Lord Seaview claimed as his own, although the sea occasionally covered it. At this point of the conflict Mr. Samuel Spider, the head keeper, put in an appearance, and all the old arguments were renewed and repeated. It was quite clear now that Prowler must either be allowed to cross over the promontory or be sent round by the sea-shore and road, and as the evening was drawing in, and neither Mr. Spider nor the watcher felt disposed to stay there all night, nor to attempt the difficult task of conducting our client the roundabout road in person, they determined to take him over the promontory in as ignominious and humiliating a manner as was possible.

No sooner was this conclusion arrived at than it was acted upon. Spider took possession of one side of Prowler, whilst the watcher stationed himself on the other, and in this manner the unfortunate Prowler was pushed and jostled over all the roughest of the ground, in a straight line for that point of the town which was nearest to Lord Seaview's boundaries, and which was rather favoured of an evening by promenaders.

To say that Prowler was annoyed and disgusted at his expulsion under these undignified circumstances is putting it mildly; his appearance was bad enough in itself, but to be pushed and kicked along by two keepers in the midst of a crowd of jeering small boys, in the presence of many of his fellow townsfolk, caused his name to be used as a jest and a by-word for several days following his unfortunate experience.

Thus it was that as soon as his swellings had gone down, and he considered himself presentable, he journeyed

with all speed to our office, and poured the whole of his woes into our ears, in search of consolation, advice, and revenge.

Was it right, was it just, was it common sense, was it law? That's the point.

Could the watcher kill his dog with impunity?

Could Samuel Spider heap indignities upon his head, and set his rugged hirelings on to steal the birds he had lawfully shot, black his eyes at the same time, and afterwards be allowed to laugh at him?

Surely no law allowed him to go such lengths as these? And finally, what could he reasonably expect to get out of the job financially by way of compensation for the injuries to his rights and to his person?

"Now, Mr. Prowler," we began, as soon as our client had finished his somewhat long story, "you say you were lying in your oilskin bag shooting wildfowl on the foreshore?"

"Certainly I was, sir—on the foreshore, where any of Her Majesty's subjects have a right to be; and to shoot, too, unless I am very much mistaken in the law," replied our excited client.

"That depends, my dear sir," we rejoined blandly, "that all depends to whom the foreshore belongs. Presumably (*primâ facie*, as we always say in the law) it belongs to the Crown, meaning the reigning sovereign for the time being; but all the public have rights of passage over it just as they have over public roads, and as the Sovereign doesn't exercise her or his rights of sporting, it is generally said that the public have the rights of shooting there, though, strictly speaking, I am not sure that the Sovereign might not insist on exercising this right to the

exclusion of the public if she or he chose, but that's merely an idea of mine that I have never allowed out; but you may take it, Mr. Prowler, that on the Crown's foreshore the public, including yourself, are allowed to shoot.*

"Of course they are; I always said so. And I, for one, shall always exercise my right, although Lord Seaview does say the shooting belongs to him."

"Oh! he does, does he?" we replied; "well, so it may, possibly."

"What?" asked Mr. Prowler, almost angrily. "Why, you just now said it was Crown property, and the public—"

"I said, if you recollect, Mr. Prowler," we replied, very calmly, though inwardly amused at our client's perplexity and excitement, "that *primâ facie* the foreshore belongs to the Crown; but, for aught I know, it may belong to Lord Seaview."

"But that's just what I've come to ask you," answered our sporting friend. "Oh, you lawyers, you're always so full of quibbles! I beg your pardon," he went on after a moment, "but that's one thing I want you to tell me. Has Lord Seaview any right to the foreshore?"

"That I can tell you if you'll first answer me a few questions," said we, smiling.

"Well?" ejaculated our client.

"In the first place, has Lord Seaview in his possession a grant from the Crown to himself or his predecessors in title of this particular piece of foreshore?"

"Now really, how should I know that, Mr. Six-and-Eight?"

---

* NOTE.—See, however, as to these rights, the second interview at the conclusion of this chapter.

"And how, my dear sir, should I know?" we rejoined, smiling at the other's chagrin; "you know I am not his lordship's professional adviser."

"Well, then, suppose he has?"

"Supposing he has, then the answer to your question is that the foreshore belongs to Lord Seaview, subject to the public right of passage over it, which no grant from the Crown can take away,* and the shooting belongs to him also."

"Subject to the right of the public?" broke in our client hastily.

"No, I'm afraid not; the shooting would belong to him exclusively."

"Hum!" muttered Mr. Prowler behind his closed lips. "And how am I to know if he's got a what-do-you-call-it —a Crown grant?"

"If he takes proceedings against you, he will produce it in support of his case."

"And I can't find out till then?" asked Mr. Prowler.

"No, until the question of the title is raised in some action or prosecution, there is no way in which you can obtain an inspection of his lordship's title-deeds."

"And supposing he hasn't a Crown grant?" was our client's next query.

"Well, then comes my second question to you. Supposing he can't produce an actual grant, can he show that he has used and exercised rights over this foreshore, he and his predecessors in title from time to time immemorial, or at least to as far back as living memory goes?"

"Oh, come now, Mr. Six-and-Eight, that's almost a

* NOTE—As to the public right of passage, see interview No. 2.

greater puzzle than the other! But what if he has exercised such rights?"

"Then I'm afraid the Court, in any action that might be brought, would presume a lost grant from the Crown, which would be as good for Lord Seaview's purpose as a grant in existence. And I must tell you," we added, "that as Lord Seaview is Lord of the Manor, and the owner of the adjoining land, it is not at all improbable that the foreshore belongs to him; in fact, it's more likely to belong to him than anyone else, except the Crown."

"Well, but how can he show that he has exercised rights over it?"

"Oh, in various ways," we replied. "For instance, does he sell sand and shingle off the beach?"

"Yes, he does that, I know," said Mr. Prowler, his face lengthening a little.

"And does he take the wreckage that comes on to the beach?"

"Well, I've heard say he does that," said Mr. Prowler, looking almost despondent as he said it.

"And does he take the sand and shingle below high-water mark?" we went on to inquire.

"Why, of course he does," said our client, "for it's only washed up as far as high-water mark."

"Pardon me, my friend, you evidently don't understand the expression 'high-water mark.'"

"Well, I suppose high-water mark is high-water mark; that is, as far as the tide goes up."

"Quite so; as far as an average tide rises, but not so far as the highest tide goes. Spring tides, as you know, Mr. Prowler, rise very much higher than ordinary

tides, and, of course, wash the sand and shingle up with them; and as Lord Seaview clearly owns the land—that is, the beach—above ordinary high-water mark, he has a perfect right to take off the surplus sand and shingle there; but the question is as to the beach between the mark of ordinary high tides and the mark of ordinary low tides."

"Oh, well, I give it up," said Mr. Prowler, leaning back in his chair despairingly. "I don't know whether he stops at ordinary high-water mark or not."

"Then, my friend, I'm afraid I can't advise you; but I think you may take it from the conduct of the watcher in not interfering with you or the fowl you shot, so long as you were both below the ordinary high-water mark, that Lord Seaview either doesn't lay claim to the foreshore, or else is not sure enough of his title to put it to the contest.

"We'll assume, then, you were within your rights in shooting on the foreshore below ordinary high-water mark. Now for your next point. Let me see, did you shoot towards Lord Seaview's land or along the shore?"

"Well, along the shore or seawards mostly, but I let off a barrel or two now and again towards the land, and I fancy one or two shots must have dropped near that confounded man Spider. I wish they'd peppered him well."

"Fortunate, perhaps, for you, Mr. Prowler, they didn't; but I'm sorry to say you've been guilty of a trespass all the same in shooting over his lordship's land."

"What!" almost shrieked our client, once more aroused. "Do you mean to call that trespassing in pursuit of game? If it is—"

"Gently, gently, Mr. Prowler. I didn't say trespass in pursuit of game; I said trespass only. The fact of your shooting over the land, or at least the fact of your shooting on to the land of Lord Seaview, is enough to constitute a common law trespass, though to make it a criminal trespass in pursuit of game it would be necessary for your body to be on his land. Of course, as what you were shooting was not what is styled game, you could not anyway be liable to be prosecuted. No; your offence of shooting on to it is merely the subject of an action for nominal damages, or if you persisted in it after notice—"

"Which I have done often, of course, to uphold the public right," broke in Mr. Prowler.

"To uphold what you erroneously *thought* was the public right, you mean, Mr. Prowler. Now, as you've done that, although warned against it, Lord Seaview might get an injunction against you; and if you still persisted in exercising your so-called right (shooting on to Lord Seaview's land above high-water mark, I mean), well, then you might find yourself lodged in Holloway during the pleasure of one of His Majesty's judges."

Mr. Prowler shuddered at the thought. He was evidently losing his nerve. After a moment he went on:

"But what difference, sir, would it make to my right to the ducks if I went on to Lord Seaview's land to pick 'em up? Yes, I did go on to his land (at least, you say it's his land above ordinary high-water mark and below the mark of the very high tides) to pick up some of those ducks; and you know—"

"Oh, you're all right there, Mr. Prowler. You see, you shot the ducks (at least, so I understood you to say)

when over the foreshore proper, which we have assumed to be public property, and they dropped dead above the ordinary high-water mark; that is, on Lord Seaview's property."

"Quite right, sir; quite right," interrupted our client, his spirits rising a little.

"Well, then, such being the case, my opinion is that the fowl belong to you since you shot them on your own land, so to speak, or at least on Crown property where, by tacit consent, you are allowed to shoot; but—and it's a big but—you'd no right to go on to Lord Seaview's land to pick them up. As soon as you stepped over the imaginary line which marks the average high-water mark you were a trespasser, and Mr. Spider and his assistants were justified in using sufficient force to eject you."

"Well, but what about my ducks, Mr. Six-and-Eight? You admit they were mine."

"Well, there I confess I find a deadlock as far as the end is concerned; but of this I am quite certain—you had no right to go and take your property, since it didn't come on Lord Seaview's land by his or his servants' acts. Your proper course would have been to have respectfully asked for them, and if Mr. Spider refused to deliver them, well, perhaps you might have brought an action against Lord Seaview."

"Do you mean to say, then," inquired Mr. Prowler, "that I have no right, as one of the public, to go on to the sea-shore when the tide is in? For that is what it amounts to if I mayn't go above ordinary high-water mark. Why, it's sheer arrant nonsense, I tell you. Else how can anyone get down to the sea at all—to bathe, for instance?"

We were used to Mr. Prowler's little ways. He wasn't a bad fellow at the bottom, though, to say the least of it, he was at times abominably rude; but then he generally apolgised for it afterwards, so we merely said quietly:

"Am I advising you, Mr. Prowler, or are you instructing me?"

This had the desired effect, and brought an apology from Mr. P., who resumed, somewhat more meekly:

"But surely, my dear sir, you don't mean to say I've no right to go down to the sea?"

"You've no more right to go over your neighbour's land to get to the sea than to get to a public road. If you want to get on to a public road you either go across your own land, or land over which you have a private right-of-way, or by any other public road. And so it is with the sea. The sea is public property, on which all men can go, and so is the foreshore proper; at least, even if this has been granted to a private person, the public still have rights-of-way over it;* but you can claim no right to go to the sea except where there is a public road leading down to it; not even if it's with the laudable object of washing yourself. Nor can you claim a right to walk along the shore above the flow of the tide. That is the general law, though in some places it may possibly be modified by an immemorial custom for the inhabitants of a particular parish or district to exercise certain rights over the beach."

"Then, if that's the law, all I wish to say is, I agree with Mr. Bumble—'The law is a ass.'"

"No doubt it is, Mr. Prowler, to some people. But, come, is there anything else you wish to know?"

* But see as to this note in interview No. 2.

"Well, Mr. Six-and-Eight, you've advised against me in everything, it seems to me; but you can't say those rascally fellows had any right to heap the indignities on me they did, and insist on taking me by the arm across the promontory, and to kill my dog. Why, I wouldn't have taken a tenner for him."

"One question at a time, my friend. I think you admitted that you refused to go back the way you came?"

"Of course I did. Didn't I tell you it was miles round, and I couldn't get round the headland? I should have been up to my neck."

"Still, my dear sir, you walked all those miles to arrive at this spot to shoot the ducks, so there was no reason why you should not have walked back, eh?" And we put on our blandest smile.

"Oh, yes. This was because the tide was in, you see, so I should have had to have trespassed by going above high-water mark. That's your own law, sir, so how do you get out of it?" said Mr. Prowler, looking slightly triumphant.

"Well, you see, although the law is sufficiently considerate of a person in peril of his life to let him invade his neighbour's land for his own safety, yet it doesn't allow him to do this to prevent his getting his feet wet. I think I know the coast round there pretty well, my friend, and I fancy you might, on an ordinary day, with an ordinary tide, have walked back the way you came below high-water mark, and not have got wet above your knees. No, Mr. Prowler, it won't do. Common-sense is against you, and therefore the law is. As you refused to quit Lord Seaview's land when requested, and by the

way you came, and even tried force to overcome his servants, they were justified in escorting you off the way they did, one on each arm, and your loss of dignity won't be sufficient cause for an action for assault, or for an action against Lord Seaview."

"But how about my poor dog?"

"Ah! that, now, is another matter," we answered, "though even there your position is not a certain one. Of course, Mr. Spider had no right to kill your dog simply because it was trespassing; nor because it had taken up a bird you had no right to get. But didn't I understand you to say that the dog attacked Spider?"

"Well, it flew at the watcher's legs when he tried to take the bird."

"And he in self-protection hit it across the head. Wasn't that so, Mr. Prowler?"

"Self-protection, indeed! Self-protection from a spaniel?" inquired our client, somewhat sarcastically.

"Well, I've known a spaniel that can give a nasty bite, though I don't intend to insinuate that it was necessary to kill the spaniel; but the watcher was clearly justified in giving it a sufficiently hard blow to send it about its business, and if by mistake, in his agitation, he hit it a little to hard, or struck it in a more vital spot than he intended, well, the dog's death might have been unintentional, after all—you take my meaning, Mr. Prowler?"

"You mean, sir, I suppose, that those scamps, Spider and the other man, would swear that the dog attacked one of them savagely, and the watcher only hit it hard enough to drive it off; but somehow, quite unbeknown to them, the dog got killed?"

"Precisely, Mr. Prowler, and I think the very best

thing you can do is to pocket your pride, and try and forget all about the unpleasant *contretemps* between yourself and Spider & Co. And now I'm afraid I must bid you good morning, as I have an appointment at another solicitor's office in five minutes' time.

"Good-bye, Mr. Prowler, good-bye!"

INTERVIEW NO. 2—1909

"Good morning, Mr. Prowler. It's quite a long time since I had the pleasure of seeing you; any fresh trouble?"

"Well, no, not exactly, at least it's not myself who's in trouble, but I've got that man Spider at last, and I want your advice as to whether I should prosecute him for assault or bring an action against him for false imprisonment, or do both; of course, it's a question what damages I should be likely to get whether I bring an action; to my mind they ought to be heavy, very heavy, and he's saved a bit of money and can pay all right; but then you lawyers have such curious ways of putting things in a court of law, an ordinary man never knows whether he'll get his rights. To be marched along in broad daylight on a public highway between two ruffians, as if one were a criminal, surely that means several hundred pounds damages at least, doesn't it?" said Mr. Prowler, becoming somewhat excited as he thought of his wrongs.

"Well, certainly" we replied cautiously, knowing our man, "if it was done without justification it would certainly seem to be a case for considerably more than nominal damages."

"Justification," almost shouted Mr. Prowler, "justification, how can there be any justification for such indignity, such an insult to a peaceable and honourable citizen, who was merely exercising his rights of walking along a highway. Why they should—"

"Let's have the whole story," we interrupted. "What road was it on, to begin with?"

"Road! It wasn't a road in the ordinary sense, but it's all the same; it was the foreshore, where all the King's subjects have a right to go. I was just walking peaceably along; I hadn't been on the shore above three or four minutes when up comes that brute Spider, and told me I had no right on the foreshore, and I must go back. I said 'I'd see——', but I needn't repeat the whole conversation; anyhow, I said plainly I had a right to walk there as one of the public, and walk there I should. Spider said if I didn't go back at once the way I'd come, he'd take me back. Of course, I replied, it would take a better man than him to do it, and if he laid hands on me I'd have the law of him.

"With that he pulls out a dog-whistle and whistles, as I thought, for his dog to set on to me, and I made up my mind I'd treat this dog as he once treated one of mine. But in a minute up came two of his ruffianly underkeepers, and, before I could lay about me, they had seized hold of me and got my hands behind me, and—— well, of course," added Mr. Prowler, his sense of shame at having had to submit to such treatment overcoming for a moment his wrathful indignation, "I had to go, and they pushed me back to the gap leading down to the beach."

"And what happened to your gun meantime?" we interrupted.

"Gun! I didn't say I had a gun, did I?" replied our client.

"No," we answered, smiling, "but if I were a betting man—"

"And if I had a gun," went on Mr. Prowler, "what difference should that make? I'm entitled to carry a gun when I like; I have a licence. But, if you must know, these ruffians took it away when they seized me, and before I had a chance to defend myself with the butt of it, and that man Spider carried it. When we got to the gap he put it on the ground, and I picked it up and was just going to knock him on the head with it, I was so indignant, when it occurred to me I might prejudice my rights."

"And so you merely left him and his underlings with a few strongly-worded observations, intimating that he would hear more of the matter."

"That's about the substance of it," was the reply; "and now what course do you advise, Mr. Six-and-Eight? What damages could I get?"

"I'm very much afraid, Mr. Prowler, that I must answer both questions with a single word, 'nothing.'"

"Nothing," exclaimed Mr. Prowler, almost jumping out of the chair. "Nothing for being ignominiously and unlawfully seized and marched along the highway, at least the foreshore, where, as you told me yourself, several years ago now, the public had a right to go."

"Gently, Mr. Prowler, gently; pray don't get unduly excited. Perhaps I was a little rash in breaking the painful news to you so abruptly. You referred to what

I told you some years ago when advising you about a little *contretemps* you previously had with Mr. Spider; but many things have happened since then."

"In the first place, as you are aware, Lord Seaview has, in a recent action, fully established his title to th foreshore, which, if I remember aright, we previously took for granted he was in doubt about.

"And then, I understand, Lord Seaview has put up notice boards that persons can only go on his foreshore with his permission, and I've no doubt," we added, with a smile, "that you have been also specially warned off by Mr. Spider."

"Yes, I know all that," replied our client, "but I don't see how that affects this question. You told me, I recollect quite well, that if there had been what you call a Crown grant to Lord Seaview, it would be subject to the public right of passage over the foreshore."

"Possibly on that occasion my remarks with regard to the right of the public to pass over foreshores were a little too generally expressed; but you will remember that was not the real point on which you came to consult me."

"Now you draw my attention to it I recollect the circumstances; I was advising you as to your rights above high-water mark, and, incidentally, I think, I remarked that I held the opinion that the rights of shooting over even the Crown's foreshores was actually vested in the reigning Sovereign and not in the public, but that the public were, as a matter of practice, allowed to shoot there; also that over all foreshores, whether vested in the Crown or not, the public had certain rights of passage."

"Yes, you certainly did say that," interrupted Mr. Prowler.

"I am afraid, then, my words were a little too general in application, if I led you to think there was an unlimited right of way as over a high road. I can only tender my apologies and admit I was wrong. Of course, in the very great majority of places bordering on the sea the public have always been allowed to walk along the foreshore, and as I was not advising on that particular point I was not, perhaps, as careful in picking my words as I might have been."

"Then do you mean to say the public has no legal right on the foreshore?" asked Mr. Prowler "You said, I remember, that they couldn't claim to go down to the sea even to bathe, except by a public road; but there was a public road down to it where I went," he added.

"Well, until quite recently, the limits of the public's rights on the foreshore (when they could get there) were not clearly defined," we replied. But now the Courts have definitely laid down that the common law rights of the public are only such as are incident to fishing and navigation. There was Lord Northcliffe's case—Mr. Alfred Harmsworth as he was then; let me see, what was the name of it? Ah! Yes, here it is. Brinckman *v.* Matley, in 1904. It was an action brought by the owners of the foreshore at a place called Joss Bay, in the Isle of Thanet, against a schoolmaster who, by invitation of Mr. Harmsworth, had brought down 200 boys from an elementary school at Poplar, and camped on Mr. Harmsworth's land next to Joss Bay. The action was to prevent the boys going over the foreshore to bathe, and it was brought in the interests

of a man who had a right by licence from the owners to take bathing machines on to the foreshore.

"The case was very ably argued for the schoolmaster, but both Mr. Justice Buckley and the Court of Appeal held that the common law rights of the public were limited, as I have said."

"Then there was another case only last year, a case in which shooting rights were claimed on the Severn and resisted by Lord Fitzhardinge, who, as lord of certain manors, claimed and proved that he was the owner of the soil of one-half of the river up to the centre line under old Crown grants. I've had occasion to look that case up once or twice lately. Fitzhardinge *v.* Purcell (1908), is the name of it.

The defendant was a gentleman after your own heart, who claimed to shoot wild fowl on the river from a boat, and also to shoot on the foreshore when the tide was out. He based his claim on several alternate grounds. First, he alleged that there was a common law right for all the King's subjects to shoot wild fowl on the foreshore or in the bed of tidal, navigable rivers; failing that contention, he claimed that there was a custom either for all the inhabitants of the manors or for all the inhabitants who were wild-fowlers, to shoot wild fowl; finally, in case all these contentions failed, he alleged that he and his ancestors before him, from time immemorial, had exercised the right of shooting, and therefore the court might hold there was a prescriptive right vested in him and his heirs.

"Mr. Justice Parker, one of the, perhaps the best, lawyers on the Chancery Bench, dealt exhaustively with the subject, and his judgment is quite a mine of learning.

"Having examined and decided in favour of Lord Fitzhardinge's claim to the soil, and decided that Mr. Purcell, the Defendant, had not, on his evidence, made out a title to shoot by prescriptive right or custom the Judge turned to the question of common law rights. He laid it down that, subject to the public rights in connection with fishing and navigation, the Crown's ownership of the foreshore is a beneficial one, and included all navigable rivers and even the bed of the sea for some distance below low-water mark, and that the Crown's rights could clearly be granted to a subject who would then be the beneficial owner, subject only to the public rights of navigation and fishing, and rights ancillary to these. Even the right of fishing might have been taken away from the public by a grant to a private person, but such a grant must have been made before Magna Charta, which rendered subsequent grants of what is called a several fishery, *i.e.*, an exclusive right to fish in navigable tidal waters, void.

"Lord Seaview, though," we added, reflectively, "does not, I know, claim a right of several fishery over his foreshore."

"Then you mean to say I've no right at all to walk along Lord Seaview's foreshore?" asked our client.

"Well, the judges didn't say how the rights of fishing were to be exercised, whether from a boat or the land. Probably, if you were to take up fishing instead of shooting, and were to take a fishing line with you, you might claim to be lawfully there, *i.e.*, of course, if you went with the *bonâ fide* intention of fishing and not merely for a walk."

"Not much in my line," said Mr. Prowler, not intending any joke.

"Then I'm afraid you will have to discontinue your walks," we replied, "but I am bound to tell you that the judges have only dealt with the question what are the public's rights at common law. If you could prove that the public or the inhabitants of a particular parish have always been accustomed to walk as of right along the foreshore, between two particular public roads leading to the sea, you might be able to establish a public right or custom, and I've no doubt there are many places where such a right could be proved to exist."

"And if we tried to prove that in the present instance, how much would the action cost if we lost?"

"Impossible to forecast. It would depend to what extent Lord Seaview was prepared to go in upholding his rights. Perhaps £1,000, perhaps more; possibly less."

"And how much if we won?"

"That, again, is somewhat problematical, possibly a hundred, possibly five.

"Then," said Mr. Prowler, rising with quite a subdued air, "I'm afraid after all I shall have to take to fishing."

CHAPTER V

A PRACTICAL ILLUSTRATION OF THE RESERVATION OF SPORTING RIGHTS TO THE LANDLORD.



THE hour of six has chimed from the clock tower of the old cathedral, and the clerks of Mr. Six-and-Eight are busy putting away their papers preparatory to dispersing for the day, when a robust individual, with a red face, sandy whiskers, and roguish eye, enters somewhat abruptly, and enquires for "the boss" in a manner which indicates anxiety, coupled with impatience. A moment later he is ushered into our presence. He is a client we know well. In his

own opinion, he is "a bit of a lawyer himself," and he possesses the popular volume for every man's use which is so productive of contention. Economy in small, extravagance in big matters, coupled with a little knowledge, an over-reaching disposition, and a pig-headed obstinacy, lead him constantly to our consulting chair.

Having carefully seen the door closed behind him, Mr. Cunningman shakes us by the hand, saying:

"I won't keep you two minutes—most simple matter—all in a nutshell. It is only a difference between me and my landlord, old Skinflint, of the Priory. You see, I hired two farms off him last Michaelmas, the Home Farm, at £1 an acre, and the Church Farm, at fifteen bob (clerical matters run cheap in our parish, but that's nothing to do with it). Here's all the papers, as I know you lawyers always ask for *papers* first thing, so now you've got 'em. You'll see by the papers that on the Home Farm old Skinflint reserves all game, wildfowl, and rabbits to himself. I did object, but it was no good; he's such an old grab-all."

Here, at least, we have a chance of stopping Mr. Cunningman's volubility.

"One moment, my friend, one moment; I must read the clause before you continue your story. Yes, here it is. I see you have a lease of this land, the Home Farm. It reads: 'The landlord reserves to himself all game, woodcocks, snipe, quails, landrails, wildfowl, and rabbits, with the exclusive right for the landlord and all persons authorised by him of preserving the same, and of hunting, shooting, and coursing over the farm.' On the Church Farm, for which, by the way, you appear to have only an agreement: 'All game on the demised premises

are reserved to the landlord, with the exclusive right of preserving, killing, and taking them.' The words are very clear and very simple. Where is your difficulty?" And we smile on him as blandly as the prospect of an easily earned 6s. 8d. can stimulate.

"Why, I want to know what I may kill and what I may not. Every time I go out with my gun there's a slanging match, and I'm right down sick of it. Old Skinflint, according to his idea, seems to be able to do everything, and me nothing. And if I could only get to windward of him once, I'd willingly give a fiver for the chance."

"For a less expenditure than the sum you name, Mr. C., I will see what you can do. Now, apart from the Ground Game Act—"

"Oh, bother the Ground Game Act!" he interrupts impatiently. "I know all about that; leave it out of account."

"Willingly," we reply, smiling at his assumption of knowledge, "I will leave that Act out of the question. Under this lease of the Home Farm—I'm not talking of the Church Farm, mind you—you can shoot—let me see—rooks, pigeons—"

"That's no use; there are no pigeons, and there ain't no rookery—leastways, not on my land."

"Then what birds are there worth shooting that are not mentioned in the lease?"

"Why, there's a good many peewits and golden plover, and they ain't by any means bad eating."

"Very unfortunate, but you won't be able to eat them, my friend," we chime in, "unless your landlord gives them to you, for you must know they are included in the term 'wildfowl'—at least I always take them to be so—



"Mr. Cunningman is very attentive."—p. 55.

for they were expressly included, with a lot more of their tribe, in the term 'wildfowl,' as defined by the Wildfowl Preservation Act, 1876. That Act, you must know, was repealed by the Wild Birds Protection Act, 1880, but I think the definition clause it contained would still be looked at by the Courts in case of doubt. Section 1 of that Act reads: 'The word "wildfowl" shall, for all the purposes of this Act, be deemed to include the different species of avocet, curlew, dotterel, dunbird, dunlin, godwit, greenshank, lapwing, mallard, oxbird, peewit, phalarope, plover, plover's page, pochard, purre, redshank, reeve or ruff, sanderling, sandpiper, sea-lark, shoveller, snipe, spoonbill, stint, stone-curlew, stone-hatch, summer-snipe, teal, thick-knee, whaup, whimbrel widgeon, wild duck, wild goose, and woodcock.' It does not necessarily follow that this definition shall apply to the word 'wild-fowl' as used in a lease, but I am of opinion that any Court would accept it."

Mr. Cunningman is very attentive during the reading of this section; he even goes so far as to take a pencil memoranda in his pocket-book of the birds specified. Then he questions us further: "Can't I even shoot a coot or a water-hen?"

"Yes; I'm inclined to think you can. There has never been any decision, as far as I know, to the effect that these waterfowl are considered in law to be wildfowl, although, as they belong to the same natural order as some of the wildfowl I have mentioned, you must not place too much faith on the opinion I am hazarding."

"And what does 'game' mean in a lease?"

"The same as it does in the Game Act, 1831—namely,

hares, pheasants and partridges, only so far as your land is concerned."

"Seems to me, then, I can't get much of a day's sport any way."

"I'm afraid not."

"And what if I do kill any of these things? Can I be summoned for trespassing in pursuit of game?"

"No, no; a man can't commit a trespass on land in his own occupation, but there's a special provision of the Game Act, 1831, to meet your case. Sec. 12 imposes a penalty on you for pursuing 'game' (note the word, 'game' only) of not exceeding £2, and a further penalty not exceeding £1 a head for every head of game killed."

"And what if I kill a snipe or a mallard on the marsh, or a woodcock?"

"There is no penalty provided to meet that case."

"Then the landlord can't do anything if I shoot them?" puts in Cunningman, brightening up.

"Softly, my friend, I only said there was no penalty. The landlord can sue you for infringing the lease, and if there is a likelihood of your repeating the offence, he can get an injunction against you, and of course you'll have to pay the costs as well as damages."

"That won't do," says Cunningman thoughtfully; "but there's a lot of snipe, and I should like to have a few of 'em, even if I didn't bag 'em myself. Now, suppose I give leave to an old poacher friend o' mine to go and shoot them snipe. I reckon a few of 'em would find their way into my larder, and he wouldn't mind injunctions or actions for damages. You needn't look so shocked, Mr. Six-and-Eight; if you'd got a

landlord like I have, you wouldn't mind what you did so as you could get the best of him."

"Well, well, perhaps you have some excuse, but your little scheme is no use, for your friend, not being the occupier of the land, could be prosecuted for trespass in pursuit of 'game, woodcock, snipe, quails, landrails or rabbits.'"

At this advice our client looked exceedingly blank, and a cloud of disappointment seemed to settle on his countenance.

We continue: "But assuming you substitute the word wild duck, plover, or wildfowl for the word snipe your poacher friend will be quite safe; they are not included in the term game, and your landlord, Mr. Skinflint, would hardly throw good money after bad by obtaining an injunction against a man of straw; at the same time you would be well advised only to take up a passive attitude yourself, and not to actively encourage your friend to shoot there."

Cunningman is silent for a moment. He is evidently commenting within. At last he rouses himself: "I'll remember that, and profit by it, without old Skinflint knowing anything of the finger I have in the pie."

"Now please oblige me," continues our client, "by casting your eye over the other paper relating to the Church Farm. That's a much better tract for wildfowl than the other, and there are some good salt marshes near the estuary, where I shoot regularly, to which Skinflint objects. It's one of our chief bones of contention. What can I do there without paying a long lawyer's bill of costs, without saying anything of damages?"

We take up the document in question, and glancing

over it again, express ourselves. "Ah, this, now, is different. This only reserves game; so that your landlord has right to the game, and you the right to everything not included under the term 'game.'"

"And suppose the old devil—I mean my landlord—should kill any of my snipe, say, or rabbits, on the Church Farm, what's my remedy?"

"You can bring your action for damages, and I am inclined to think you could summon him for trespass in pursuit, under the Game Act—I really don't see why you shouldn't, though I confess I never heard of a case."

"I'll try it on, then, if he does, anyway," says Cunningman, "though I don't think I shall ask you to take the case for me, Mr. Six-and-Eight, for I know you're a landlord's man."

"So are the Justices, you'll find. They won't convict your landlord if they can see their way out of it; and, by the way, you'd better not invite any of your friends to shoot the snipe or rabbits."

"Why?" asked Cunningman. "If I can shoot them, surely I can give leave to anyone else?"

"No; there you're mistaken, for, curious as it may seem, although you, yourself, may on this farm kill anything that's not game, you can't authorise anyone else to, unless it's your servant, or some one *bonâ fide* employed to take them on your behalf, for the Game Act, 1831, says—let me see now"—(referring to our Oke), "yes; in Sec. 30, 'that where the landlord, or any other person than the occupier, has the right of killing game, the leave of the occupier shall not be a sufficient defence to a prosecution for trespass in pursuit,' so although only game is reserved, your landlord can

prosecute a stranger who is in pursuit of snipe, woodcock, quails, landrails, and rabbits, even if he has your leave and license."

"It's a rum law," says Mr. Cunningman, meditatively.

"I quite agree with you, it is curious, but so are a good many of our laws. Our legislators never know the effect of half the laws they enact till years after they are passed. The law-givers, no doubt, mean one thing, but the judges generally manage to find they've said what they didn't mean."

"Then my landlord can do just as he likes about the game on both farms, and I've no right at all. Isn't that so, Mr. Six-and-Eight?"

"No, not quite; your landlord is under certain liabilities."

"Well, what are they—what rights have I got?"

"In the first place, your landlord has no right to overstock his land with game to the damage of your crops. If you suffer damage to the amount of over one shilling an acre of the area damaged and give the notices to your landlord which are required by the Agricultural Holdings Act, 1908, you will he entitled to recover compensation from him. Then, again, you seem to have forgotten the wildfowl, and the salt marshes, which, I believe you said, adjoined an estuary on the Church Farm where only 'game' are reserved to the landlord. You can shoot there all the wildfowl you like with impunity, and your landlord cannot help himself. You can also prevent him doing so, which fact, we presume, will give you still greater pleasure; you remember the list of birds I read out to you a few minutes ago, which you noted down at the time.

"Well, good day, Mr. Cunningman, or perhaps we shall be more correct in saying 'good evening.' Of course, I am always pleased to see you, but next time we shall be obliged if you will call a little earlier."

"Our fee! Dear me; we lawyers are so apt to forget that, of course. Well, it's been a long interview; shall we say 13s. 4d.? Thank you. No, it's not 'the usual,' nor is your hour of calling."

"And hard-earned money, too," we think to ourselves as the door closes behind him.

* * * * * *

This is probably the most suitable place to add a few words on the provisions of the Agricultural Holdings Act, 1908, as to damage by game where the right to take the same is reserved to the landlord. Section 10 is the one dealing with this matter.

As mentioned above, the Act (which repealed and re-enacted the provisions of the short Agricultural Holdings Act of 1906) gives the tenant a remedy in respect of all damage to crops amounting to over one shilling an acre of the area damaged, and it is impossible for the tenant by any agreement to deprive himself of the rights given him by the Act.

Before, however, the tenant can put himself in a position to enforce payment of compensation he must comply with certain conditions.

First; as soon as may be after he first observes the damage he must give a written notice of it to the landlord.

Secondly; opportunity must be given to the landlord to inspect the crop before any of it is cut or gathered, or in case of a crop consumed on the land before any of it is

consumed, or if the damage is done after cutting then before the crop is removed from the land.

This, as we read it, merely means that a reasonable time should be given to the landlord to come or send and inspect the crop after the notice of damage is given. In all cases, however, it would be well for the tenant in giving his notice of damage to say when he wants to cut or gather the crop and request an immediate inspection.

Thirdly: a second written notice, this time of the claim itself, with particulars must be given not later than the 31st January, following the damage, *i.e.*, within one month from the end of the year, unless an agreement has been made to substitute some other period of twelve months for the calendar year, and in such case within one month from the expiration of such twelve months. Thus, if the tenant holds from the 11th October, it may be agreed that the year ending the 11th October shall be substituted for the calendar year for the purposes of the Act. In such case the notice of claim would have to be given not later than the 11th November following the doing of the damage. The 31st January, however, will be the date before which particulars must be delivered in all cases where there is not express written agreement to the contrary.

The particulars should give the situation and description of the crop, the estimated area damaged, and the amount claimed.

In default of any agreement as to the amount to be paid being arrived at after the damage is done, the compensation is to be assessed by a single arbitrator, mutually agreed upon, or, in default of agreement, appointed by the Board of Agriculture and Fisheries on the application of either party.

Many landlords have been alert to take advantage of one provision of this section, viz., that where it is shown in respect of a contract of tenancy made before the 1st January, 1909, the prospective damage by game has been taken into account in fixing the rent (*i.e.*, a lower rent has been accepted), the arbitrator shall take this into account in assessing the damage.

Many leases and agreements made after this provision was first introduced by the Act of 1906, contain words indicating that, in assessing the rent, an allowance of a certain amount has been made to cover damage by game; and immediately after the passing of the 1906 Act some landlords gave their yearly tenants notice to quit in order to force them to enter into fresh agreements at the same rent as before, but containing a statement that damage by game had been taken into account. Where there is such a clause in the agreement or lease, or where on the bargaining between the landlord and tenant before the land was hired (although not so set out in the written document) a lower rent was accepted in consideration of prospective damage, the tenant must be cautious about proceeding under the Act.

If the arbitrator finds that a sufficient allowance was made in the rent to cover the damage complained of, the tenant may find himself saddled with all the costs of the arbitration.

This caution, of course, only applies to tenancies beginning before 1st January, 1909, or at least where the lease or agreement is made before that date.

"Game" in this Act includes "deer, pheasants, partridges, grouse, and black game."

CHAPTER VI

THE GROUND GAME ACTS, 1880 AND 1906.



SINCE the last edition of this book was published the Ground Game Act, 1880, has been amended in two particulars by the Ground Game (Amendment) Act, 1906. All references in this chapter to the

Act and the sections (save as otherwise mentioned) must be taken as referring to the principal Act, that of 1880, the Act of 1906 being referred to as the Amendment Act.

The object of the principal Act, as stated in the preamble, was to make further provision to enable *occupiers* of land to protect their crops from injury and loss by ground game.

The Act gives an occupier a right, which he cannot divest or contract himself out of, to take and kill ground game, *i.e.*, hares and rabbits, subject to certain conditions (secs. 1, 2, and 3).

There is no definition of an occupier, but sec. 1, sub-sec. [2], tells us what persons are *not* to be deemed occupiers. They are persons having a right of common only, and persons having a right of grazing or pasturage for sheep, cattle, or horses, for not more than nine months. Thus if, as is common in some districts, a person takes grassland from the early summer to Michaelmas or November, the game and rabbits being reserved to the landlord, the hirer has no right to ground game under the Act.

It has been suggested that a landlord might effectually reserve the exclusive rights to rabbits on grasslands, and annul the operation of the Act by letting the lands for grazing purposes only for six months with a right of renewal each six months; but we do not advise anyone to place too great a reliance on this suggestion, and there are probably but few instances in which it would be thought worth while to try and circumvent the Act at the expense of having such an awkward tenancy.

In the case of Pochin v. Smith (1888), a person who hired some meadows, or the right to cut and

consume the hay thereon, from 6th August, 1886, to 27th March, 1887, was considered by the Court to be an occupier within the Act, although the case also turned on other questions, which left it not quite clear whether a definite decision to this effect was intended.

The right under the Act is concurrent with the right of any other person who claims under a reservation or grant. If the ground game is reserved to the landlord, the right of the tenant is concurrent with that of the landlord, If the ground game is not so reserved, *and* the tenant thus having the right to game vested in him, lets this right to a third person, the tenant (of the land's) right is concurrent with that of the latter.

The conditions under which the occupier can exercise his concurrent right may be summarised as follows:

1. The occupier can exercise the right himself, and through persons duly authorised by him in writing, but such persons must be either (*a*) members of his household resident on the land; (*b*) persons in his ordinary service on the land; or (*c*) *one* person *bonâ fide* employed for reward in killing and taking ground game. (Sec. 1, sub-sec. [1] [*b*].)

2. Only the *occupier himself* and *one* other person (who must come under one of the classes above mentioned) can kill ground game with *firearms* (Sub-sec. [1] [*a*].)

3. Any person authorised as above must be prepared at any time to produce his written authority on demand, and must produce it to the person who has the right of shooting over the land, or to any person who has the latter's authority in writing to make such demand. (Sub-sec. [1] [*c*]).

4. No firearms must be used at night (*i.e.*, from the

expiration of one hour after sunset to the commencement of one hour before sunrise).

5. No spring traps must be employed, except in rabbit holes, and no poison must be employed. (Sec. 6.) The person offending against this section is liable to a penalty of £2 on conviction before the Justices. (It may be well to mention, although this is not a provision of the Ground Game Act, that hares must not be killed or taken on Sundays or Christmas Day.—See Chap. XXI.)

6. On moorlands and unenclosed lands, not being arable lands, which either do not adjoin arable lands, or if they do, are not less than twenty-five acres in extent, the full rights can only be exercised from the 11th December to the 31st March inclusive, but under the Amendment Act the rights of killing and taking ground game *otherwise than by firearms* may be exercised from 1st September to 10th December (both inclusive), and in respect of this last period the occupier and the owner or person having the sporting rights may make an agreement as to the joint exercise of the right of killing ground game.

We cannot but think that the Act is very unsatisfactory, not so much on account of what it enacts as for what it leaves unsaid. So many problems present themselves to the inquiring mind—problems that it is very difficult, if not impossible, to forecast the judicial answer to when they come before the Courts for decision, and it is curious to note how few of them have actually been settled by the higher Courts. What, for instance, is meant by "a member of his (the occupier's) household"? One well-known legal authority (Mr. Willis Bund, 4th edition of Oke's "Game Laws") has given it as his opinion that "probably persons who, like coachmen and gardeners,

do not sleep in the house, but in cottages rented by the tenant, and situate on the land in his occupation, would be held to be members of his household." With all deference, we venture to think that such a construction of the word "household" is a good deal wider than the ordinary sense of the word, and that the meaning commonly attached to it of persons dwelling under the same roof under one domestic government is the one which is more likely to be adopted when the point comes before the High Court for decision. It is possible that a coachman or gardener employed and living as above mentioned may be held to be within the second class of persons, viz., those "in his (the occupier's) ordinary service on such land"; but even that we consider somewhat doubtful, though we incline to think they would come within this clause.

But, again, what does "ordinary service" mean? Are a gang of Irish labourers who are taken on for the harvest only to be considered as in the ordinary service of the farmer. If they are, he can authorise each one of them to kill the ground game that have been making inroads upon his crops. The authority above quoted inclines to the opinion that "'ordinary' would seem to mean 'regular'; thus a casual labourer who was employed for a few days at harvest time would not come within this class, as he would not be in the ordinary employment . . . it must be a person who was regularly employed on the farm." But granting that "ordinary" may mean "regular," we cannot see that this helps us very much, as it seems to us that both words are capable of meaning either "settled" or "customary." Now it is clearly customary to hire an extra lot of men for

the harvest month, and if this meaning be adopted, these men would come within the class of those engaged in the occupier's ordinary service, whilst if the other meaning of "settled" or "fixed" be taken as the correct one, only those who are engaged for an indefinite time with an expectation of a considerable term of service would be included.

We incline to think that such labourers as are engaged in the customary manner for the whole harvest would be held to be within the privileged class, while a man casually engaged by the day when the farmer is specially busy would not.

It must be remembered that members of the household must be resident on the land. Therefore, if a man hires a farm without a farmhouse attached to it, or having a farmhouse which he does not occupy himself, it will be practically impossible for him to authorise any of his household to exercise the powers of killing ground game unless they are in his ordinary service on the land. If, for instance, the the tenant of a farm lives in a house under another hire, he may authorise his son who lives with him to kill ground game on the farm, if—and only if—the son works on the land for the father.

In a Scotch case quoted in "Oke" it was held that a guest invited for a week expressly for some rabbit shooting was for the time, a member of the family resident in the house (Stuart v. Murray).

The third heading of "One person *bonâ fide* employed for reward" also presents great difficulties. It does not appear that the person need be exclusively so employed for the time being. Doubtless a mole-catcher who is



"Mr. Stubbles."—p. 70.

employed to kill rats, moles, and rabbits is within the class. So no doubt is a man who is not in the exclusive employ of the tenant, but is given so much a head for every rabbit he kills, and comes on the land for that purpose only at odd times when he has a mind to do so. The question what will constitute "reward" has not been settled, but in a Scotch case heard in 1898 (Bruce v. Prosier) it was held that a man who had a written authority to take rabbits and to keep all he took for his trouble was *bonâ fide* employed for reward, the reward being, of course, the rabbits that became his property. No doubt the evidence satisfied the Court that the occupier was actually desirous of having the ground game destroyed, and that it was not merely an attempt to evade the Act.

In the case above supposed, of the tenant not living on the land, could he give his son, who was not employed on the land, liberty to shoot or take ground game by employing him for reward? It seems that he could do so if the employment were *bonâ fide*, but the case would certainly present a suspicious appearance, and the circumstances would have to be strictly investigated by the magistrates before whom such a point was raised; and if they were of opinion that the tenant was merely trying to evade the Act in order to give his son the right of shooting, they would be bound to hold that the employment was not *bonâ fide*, and that the son was not a person privileged to exercise the powers of the Act.

The object of limiting the class of persons to exercise the powers of the Act is, of course, to prevent the wholesale slaughter of the game to the prejudice of the landlord having the sporting rights beyond what is

really necessary for the tenant's protection. It must always be borne in mind that the Act was not passed to give tenants sporting rights for pleasure, but merely to give them a substantial check on the power of the landlord to keep the land overrun with ground game, to the great detriment of the tenant's crops, and a check that is more satisfactory than the somewhat uncertain right to recover damages for over-stocking the land with game—a right which, as we have seen, has now been converted into a statutory one in the case of damage by winged game or deer. It must not be forgotten, too, that any person authorised by the occupier to exercise the rights given under the Act must be authorised *in writing*, and should carry his written authority about with him, as he may be called upon at any time to produce it; and if he fails to do so, he is liable to be prosecuted as a trespasser in pursuit of game.

The only persons who can demand to see the authority are the landlord who reserves the game, or, if the shooting is let, the tenant of the shooting, and persons who hold the landlord's or shooting tenant's *written* authority to make such demand.

An Interview.

We may perhaps make the point clearer by referring to an interview we had some time ago with an old friend, Mr. Stubbles. He came to the office one day in a rather excited state. We asked him what the trouble was, and the conversation proceeded much in this way:

"You know, sir, the lease of my farm (you looked through it for me when I took the farm) reserves the right of shooting to my landlord. You explained to me,

if you remember, all about the Ground Game Act, and gave me particular caution to give a written authority to anybody I allowed to shoot the ground game. Well, you know my eldest boy, Tom, has just left school, and he's living at home for a bit, and, of course, nothing'll suit but he must have a pot at the rabbits. So I gave him a written authority, just this, 'I authorise my son, Thomas Stubbles, to shoot ground game on the farm occupied by me.' I meant to have brought the bit o' paper with me, but I forgot it when I left home."

Mr. Six-and-Eight: And I suppose you told your son that he must always have the authority with him, eh?

Mr. Stubbles: That's it.

Mr. Six-and-Eight: And I suppose he went out to shoot the rabbits, and left the authority at home?

Mr. Stubbles: Why, yes, that's just what he did do. You see, he went out yesterday ferreting, and took his young brother Charlie with him to look after the ferrets. Tom tells me he'd been shooting about an hour when the keeper, old Sharpsite, came up. He's very jealous o' me killing any o' the rabbits. I rather fancy he gets a commission on the head of game and rabbits they kill, but I don't know. As far as I can make out, he came up to Tom, and said, in a sharp sort o' way (he's got a sharp tongue as well as "sharp sight!"), "Now, young man, what are you doing here a-shooting my rabbits?" Master Tom, who's got a sharp tongue, too—and you know what boys are, sir, says—"What's the rabbits got to do with you?" Old Sharpsite got mad, and swore he'd make the young scamp answer for it, and asked the boy who he was. Tom told him he was my son, and asked him who he was. This made old Sharpsite worse

than ever, for he thinks himself the most important man in the parish, 'cepting the squire, and he says, "I'd have you know, young fellow, that I'm your father's landlord's representative, and I want to see your authority to shoot," I fancy that rather scared Tom, for he remembered he hadn't got it with him; but of course he didn't say so, but asked the keeper, quiet-like, "Where's your authority?"

Mr. Six-and-Eight: He hadn't left his wits at home, then, if he had left his authority. A chip of the old block, eh, Mr. Stubbles?

Mr. Stubbles: Well, I don't know that I should have thought of it myself. Sure enough, old Sharpsite hadn't got his authority either; but he blustered a good deal, and talked about his papers being an authority under the hand and seal of the landlord, and swore he'd summons the boy for trespassing in pursuit of game.

Mr. Six-and-Eight: And I suppose you want to know whether he can do so?

Mr. Stubbles: Wait a bit, sir. I haven't quite finished the story. As soon as the keeper was gone, Tom sent his young brother running home for the authority I'd signed, and the little 'un hadn't long got back with it when Mr. Keeper comes back again and produces his authority signed and sealed, as he said it was. Tom, he at once pulls out my authority, and I bet old Sharpsite was a bit crestfallen, for he thought he'd been sold. However, he wasn't going to be done so easily, so he accuses my boy of having got the authority signed by me after he'd demanded to see it the first time, and he went away telling Tom he'd have a summons out against him to-day for not producing his authority when he first demanded it.

Mr. Six-and-Eight: And now, of course, you come to me to know whether your son is in danger of being convicted of a trespass under the Game Act?

Mr. Stubbles: That's about it, sir.

Mr. Six-and-eight: I wonder why it is that I am always being asked to advise on points upon which there is no decided authority; for you must know, Mr. Stubbles, that on this point, as on a great many other points arising under the Act, there has been no authoritative decision. One thing seems to be certain—that if Master Tom hadn't produced his authority on the second occasion on which the keeper asked for it, he would have been liable to be convicted of a trespass in pursuit of game.

Mr. Six-and-Eight (continuing): It would have been no good his saying he had left it at home, or making any excuse of that kind. I'm not saying that in every case the magistrates would convict; in fact, I would go so far as to say that if an authority had been accidentally left at home, and the person shooting offered to fetch it at once, and did fetch it, and the magistrates were clear in their opinion that the authority was in existence at the time, and it was merely through an oversight of the shooter that he was not able to produce it at once, they would not convict. Magistrates are only human after all, but if the prosecutor was vindictive, and insisted on having a case stated for the High Court, the judges would probably send the case back to the magistrates for a conviction to be recorded, with an intimation that only a nominal fine should be imposed.

Mr. Stubbles: Yes, I think I grasp that; but how about the other point—the keeper's authority?

Mr. Six-and-Eight: On that, unfortunately, the Act

leaves us in some doubt. It is not stated that the person demanding to see the shooter's authority must himself produce his authority to make the demand, but merely that he must have a written authority. Now, common law is supposed to be the embodiment of common sense.

Mr. Stubbles: It's only "supposed" to be, isn't it?

Mr. Six-and-Eight: Well, after some considerable practice of the law, I've come to the conclusion that the view the common law takes of anything is generally a sensible view, but the construction of Acts of Parliament certainly does seem to be at variance with common sense at times. In this case, however, I think we must take common sense as our guide. If the landlord himself, assuming he has retained the sporting rights, or the person to whom the shooting is let, demands to see the shooter's written authority, it must be produced at once, and the fact that the person shooting or killing the ground game doesn't know the landlord or tenant of the sporting rights by sight would, I think, make no difference; but if any other person makes the demand, I am of opinion that the shooter is entitled to inquire as to the authority to make the demand, and I think your son was justified in refusing to produce your authority to him until the keeper produced his authority from the landlord.

Mr. Stubbles: But there's no actual decision to that effect?

Mr. Six-and-Eight: No; as I said, there is no decision on the point, but I think we may argue from somewhat analagous cases. Suppose you were the custodian of certain documents, and you were bound to produce them to a certain person, or to anyone authorised by

him in writing to inspect them, and a stranger applied for inspection, you would say at once, "Where's your authority?" I think, Mr. Stubbles, you may rest quite content; if your boy is summoned, which I don't expect, you needn't fear that he'll be convicted. If he should be, we'll take the case up to the High Court for you, if you like.

Mr. Stubbles: And who'd pay the costs if I was successful?

Mr. Six-and-Eight: Oh, in all probability you would have to pay them; but that shouldn't trouble you, my dear sir. Think of the satisfaction of putting the magistrates right in their law.

Mr. Stubbles: Well, we'll talk about that when the time comes.

And, as usual, we part the best of friends, trusting we may meet again at some future and not far distant date.

We have considered now some of the conditions under which the rights conferred by the Act are to be exercised, but there remain one or two provisions of the statute to be noticed before we proceed to further consider its general application. The occupier or person authorised by him to shoot does not require a game licence to shoot hares, though he does require a gun licence (Sec. 4). The ground game killed by the occupier, or by any person duly authorised by him belongs to the occupier, and he may sell it without a licence (Sec. 4). He may not, however, sell hares to any person who is not licensed to deal in game (see the chapter dealing with these licences). Any ground game killed by an unauthorised person belongs to the landlord to whom it

is reserved, or to the tenant of the sporting rights; in other words, to whomsoever the shooting belongs.

One of the most important sections of the Act is that which makes void all agreements which tend to exclude the occupier from, or deprive him of his statutory rights (Sec. 3). This section prevents the occupier contracting himself out of the Act in any way. A covenant contained in a lease of land that the tenant will not exercise his rights under the Act is absolutely void. The tenant is not bound to observe it, nor can the landlord be compelled to pay any sum of money which he has undertaken to pay in consideration of the tenant entering into the covenant. So also a condition that the tenant is to pay an extra rent if he exercises his rights is absolutely void. There is no absolute prohibition against an agreement to regulate the manner in which the rights shall be exercised, and it has been suggested that a tenant may, in effect, materially modify his rights. "There is nothing," says Mr. Willis Bund, in the 4th edition of "Oke's Game Laws," "to prevent the occupier agreeing with the landlord that the one person he will employ for reward to kill ground game shall be the landlord's keeper, and that person shall be the person authorised to use firearms to kill ground game. There is nothing to prevent the occupier and landlord agreeing as to what persons the occupier shall name, either members of his households or servants. . . . There is also nothing to prevent the landlord and tenant agreeing to forbear to exercise the right in a certain way, *e.g.*, using snares. In fact, so long as the agreement is one that does not divest or alienate the right, or place the occupier under an advantage or disadvantage in respect of not exercising

or exercising it, but is only an agreement as to how the concurrent right is to be exercised, it would seem to be perfectly legal, and it would not be difficult to draw an agreement that would be perfectly legal, and would reduce the concurrent right to very small dimensions."

We have quoted this authority at some length, not because we altogether agree with it, but because of the respect which is due to any opinion emanating from such a source. For ourselves, however, we have very grave doubts whether such an agreement as Mr. Willis Bund suggests in the closing words of the above paragraph could be supported. We do not say that no agreement as to the way in which the right is to be exercised can be legally made, but we certainly think that any one such as is suggested, which would in effect materially abridge the rights conferred by the Act, would be within the section which makes void all agreements "which purport to divest the occupier of his right," for it seems to us that the right mentioned includes the right of allowing all members of his household, and all his servants, and of appointing any person he chooses for reward to kill ground game, and also the right of destroying such game in any way he pleases, save by setting traps elsewhere than in rabbit-holes, or by poison, and in the absence of any authoritative judicial ruling on the point, we venture to give it as our opinion that such agreements are, speaking generally, void. Such agreements, we affirm, are contrary to the spirit of the Act; whether they are contrary to its letter has yet to be judicially settled.

We think, moreover, our view is borne out by the Amendment Act, which, in respect of the moorlands, and

uninclosed lands to which it applies, expressly provides that Section 3 of the principal Act shall not apply to prevent an occupier of such lands making an agreement with the owner of the shooting for the joint exercise or the exercise for their joint benefit of the right of killing and taking ground game between the 1st September and the 10th December inclusive, This seems to imply that but for such provision any such agreement would be absolutely void.

TRYING TO AVOID THE ACT.

AN INTERVIEW.

Whilst discussing the question of agreements depriving the occupier of his rights, we might perhaps mention an instance in which, from the landlord's point of view, the Act may, in a way, be avoided. The point was thus brought to our notice.

One morning a wealthy landowner, to wit, Sir John Rocketter, a sporting baronet, who was the proud possessor of several large family estates, was ushered into our sanctum, accompanied by a gentleman whose acquaintance we had not previously made. After the usual salutations, the former introduced the stranger as Mr. Fieldman.

"Mr. Fieldman," said the baronet, "is devoted to agriculture; in fact, if he will allow the term, I would describe him as an experimental agriculturist, and he has taken a fancy to my Home Park Farm. As you know, I want to give up farming it myself, and have agreed to let it to Mr. Fieldman. He has heard a great deal of your reputation, Mr. Six-and-Eight, and does not

wish to consult any other solicitor, but in the matter of the lease is content to leave himself in your hands, and you will therefore act for both of us.

We bowed and expressed our thanks for the compliment, and at once set to work to make notes of the terms of the proposed lease.

"The terms of the lease will be——?" we inquired interrogatively.

"Seven years," replied Sir John.

"The rent?"

"£500 a year."

"The game, I suppose, you will reserve?" we went on.

"Certainly," replied Mr. Fieldman; "I am not much of a sportsman myself, and although I might have liked to have given my friends a little shooting, still, as Sir John Rocketter is most anxious to continue to have the shooting, and as my object in taking the land is to carry on my experiments in farming, I have not raised any objection, though, of course, I would have given an increased rent if there had been no reservation."

"Quite so," we replied; "of course, though, you will still have the pleasure of shooting ground game."

"No, Mr. Six-and-Eight, I've agreed to relinquish my claim to that even."

"That is a thing which, unfortunately for your landlord, the law does not allow you to do, Mr. Fieldman," we said, with a smile. "You know the Ground Game Act gives the occupier an inalienable right."

"Yes, yes," broke in Sir John, "but you must get round the Act some way, Mr. Six-and-Eight. That's part of our bargain."

"Impossible, my dear Sir John," we protested. "The Act says that all agreements purporting to divest the occupier of his rights are void."

"Confound the Act," said the baronet. "You'll excuse me" (to Mr. Fieldman), "but you know how much importance I attach to this point. In fact," (addressing himself to us), "that was the first condition I made, that I should have the sole and exclusive right to all game, including ground game. Of course, I know that Mr. Fieldman will never wish to annoy me in this matter, but—"

"But many things may happen in seven years, and you wish to have your right established on a strictly legal basis," said we, interrupting him.

"Exactly," was the reply. "Now, couldn't you put a clause in the lease that if Mr. Fieldman destroyed any of the ground game in any year the rent should be increased to £550? I'm sure Mr. Fieldman would not object to that."

"Certainly not; I am quite agreeable if it can be done in that way," replied Mr. Fieldman.

"I'm extremely sorry, gentlemen," we replied, "but I'm afraid it cannot be done. The Act is most imperative, you know."

"I have heard," said Sir John, "that there's no Act of Parliament that a clever lawyer can't drive a coach and horses through, or, if not through, at least round it, and if anybody can do it in this case you can, Mr. Six-and-Eight. Come, put on your thinking cap."

"No, my dear sir; you have too good an opinion of my powers," we said modestly. "There are some Acts of Parliament that can't be driven round, but if you will

allow me, I'll just refresh my memory by looking at the Act, and I'll consider the matter. Would it be convenient for you to call again in the course of the day, or say to-morrow, if you like?"

"The sooner the better," answered Mr. Fieldman. "If convenient to Sir John and yourself, I would suggest this afternoon, at, say, three o'clock, as I want, if possible, to leave for town to-night."

"Three o'clock will suit me," said Sir John.

"And me," we added. Our clients, therefore, left us to puzzle over the question.

We turned over the Act and various works on conveyancing, and after lunch we awaited our clients, who, at three o'clock to the minute, were again announced.

"Well, Mr. Six-and-Eight," said the baronet, "and have you thought of a way out of the difficulty?"

"No; I'm sorry to say that a consideration of the matter has only strengthened my opinion that there is no way of circumventing the Act. The only thing I can suggest is a kind of half measure, which may answer its purpose in this case if Mr. Fieldman agrees to it."

"And pray what is that," asked the latter gentleman.

"This," we replied, "is the course I suggest, subject to your approval. I calculate that on this particular farm the right of shooting ground game is worth to the tenant nearly £20 a year, whilst, on the other hand, the tenant can, by the full exercise of his rights, damage the landlord's shooting to the extent of £30 to £50. You have agreed the rent at £500. I propose to put it in the lease at £520, and to have a separate agreement, that if in any half-year the tenant does not exercise his rights under the Act, the rent for that half-year shall be reduced £10.

You will, of course, understand that this agreement is absolutely void, and Sir John Rocketter can insist, if he chooses, on having the full £260 every half-year; but the agreement shows the intent of the parties, and for this reason it is well to put it into writing."

"But what about me—the unfortunate tenant?" said Mr. Fieldman. "It seems to me I stand to pay if called upon, and get nothing in return."

"Your remedy, Mr. Fieldman," we replied, "if you are called upon to pay the full £260 a half-year, lies in retaliation—in what, in the law of nations, would be called 'a species of reprisals.' You would make it your business during the next half-year to exercise your rights under the Act to the fullest extent, and you would thus get, in some measure, an equivalent for the extra £10 you paid, whilst you depreciate the value of Sir John's shooting to the extent of perhaps £15 or £20."

"Yes, I see; the plan seems a feasible one," said Mr. Fieldman reflectively, "so long as the ground game is there," he added, after a pause; "but how if Sir John kills the rabbits down quite close—what chance have I of reprisals then?"

"Oh, we can, if you like, expressly provide for that," we answered, "by inserting a covenant in the lease by Sir John to keep up a fair stock of ground game; but we think that will not be necessary. Sir John, for his own sake, would hardly kill them off so clean as you suggest. We shall, anyway, have a covenant by Sir John to pay compensation for crops destroyed. And finally, we think we had better have a proviso in the lease—not in the agreement—that the last half-year's rent will be reduced to £250. The reason for this latter clause, of course, will

be that, being your last half-year, you will have no chance of retaliating in case the extra £10 is demanded. During that six months Sir John will have to submit himself to your mercy, Mr. Fieldman," we added, with a smile.

"Then it seems to me," said the baronet, "the lease will read as if I am providing ground game for my own shooting and my tenant's as well; but behind the lease there will be this agreement—what you will call a collateral agreement, I think—which I understand you to say is nothing more than the embodiment of an agreement which is binding on us in honour only, and not in law."

"Exactly, my dear sir," we replied; "you grasp the situation at once. Of course, it's not a very satisfactory arrangement, but I'm afraid it is the best we can make."

"Well, I consent to it if Sir John does," said Mr. Fieldman.

"And I accept it as the best arrangement your ingenuity can devise," said the baronet.

We then proceeded to discuss the other terms of the lease. The arrangement we have referred to was never carried out, as, unfortunately, before anything was signed, Mr. Fieldman died suddenly of heart disease, and Sir John Rocketter decided to continue to farm the land himself until he could find another exceptionally good tenant.

As illustrating the futility of trying to avoid the Act by any indirect agreement which shall be legally binding, the case of Sherrard v. Gascoigne (1900) may be referred to.

In that case, as in the one above instanced, the landlord, Mr. Gascoigne, was particularly desirous of retaining the whole of the shooting on the letting of the farm. The tenant, Mr. Sherrard, on the other hand, was only anxious that his crop should be protected. Accordingly, when the lease was executed, Mr. Gascoigne's agent entered into an agreement with Mr. Sherrard, that if the latter would refrain from killing the ground game he should be well compensated for all damage done by such game. In pursuance of this agreement the tenant let the hares and rabbits multiply to such an extent that the resulting damage to his crops in one year was valued (by him) at £178 15s. This sum he sought to recover from Mr. Gascoigne. The latter, however, pleaded that if such an agreement as alleged ever was made by his agent, it was void under Section 3 of the Act, and the Divisional Court upheld this contention and gave judgment for the defendant.

One would hardly have thought it necessary to mention (had the Courts not been troubled with the matter) that a general reservation of the sporting rights by the landlord is not void *in toto*, but only so far as is necessary to give the tenant his concurrent rights to ground game under the Act (Stanton v. Brown, 1900). Under Section 2 of the Act the case is the same where an occupier of land, the shooting over which is not reserved, lets the sporting rights to a third person (Morgan v. Jackson, 1895); the agreement is not void, but the occupier retains his concurrent rights in respect of ground game.

General Application of the Ground Game Act.

The Act applies to all occupiers of land who occupy as tenants and not as owners. The preamble of the Act reads as follows: "Whereas it is expedient in the interests of good husbandry, and for the better security for the capital and labour invested by the occupiers of land in the cultivation of the soil, that further provision should be made to enable such occupiers to protect their crops from injury and loss by ground game."

The question whether the Act applied to occupying owners was not for some years definitely decided; but it has been held by the Court of Appeal in the case of Anderson v. Vicary (1900), A. L. Smith, L.J., dissenting, that an occupying owner who lets the shooting is in the same position under the Act as an ordinary occupying tenant, and cannot, by any agreement, debar himself of his concurrent rights under the Act.

The Courts, however, had previously held that the preamble above cited determines the scope of the Act (Smith v. Hunt, 1886), and that consequently an owner occupying his own land could not be prosecuted under the Act for using firearms at night, or for setting spring traps in other places than rabbit-holes, or for employing poison; and this notwithstanding the fact that the section (6) which prohibits these acts expressly says that "no person having a right of killing ground game under this Act *or otherwise* shall use any firearms," etc., etc. The Judges said in effect that it was a general rule of law that a person could do as he liked on his own land, and if the Legislature had meant to restrict this right they'd have said so clearly; but it was clear from

the tenor of the Act that it was not intended to affect occupying owners.

The contrast of the two cases is somewhat curious. The one decides that the Act does not apply to owners so as to interfere with the exercise of their inherent rights of taking ground game in such manner as they think fit; the other decides that the Act does interfere with their power to do as they like with their own property, for it prevents them, when in occupation of their own land, letting the entire and exclusive right of sporting to another. They cannot grant away the *exclusive* right to the ground game.

Then there is another curious contrast of cases. Although the penal section above referred to (shooting at night, poison, spring traps) does not apply to an owner occupying his own land, it does apply to an occupier who has the shooting along with the land, *i.e.*, where the land is let without a reservation of the game. So, if Mr. Jones lets a farm to Mr. Smith, and doesn't reserve the game, Mr. Smith has not quite such extensive rights of killing ground game as he had before the Act was passed, for he must not shoot them at night, nor may he set spring traps, except in rabbit-holes, nor may he poison rabbits. For doing any of these things he is liable to a penalty not exceeding forty shillings (Saunders v. Pitfield, 1888). In this case the tenant had set traps otherwise than in rabbit-holes, and was prosecuted for so doing. The case was taken up to the King's Bench Division, where the tenant contended that, as the Act had been held not to apply to owners occupying their own lands, it ought not to be held to apply to tenants where the

game was not reserved. The Judges, however, held otherwise, and as they were the same Judges that had tried the case of the owner occupying his own land and letting the shooting, it is to be assumed they were satisfied as to the consistency of the two decisions, though we confess we are not. They must, however, be taken as correctly laying down the law until overruled by a higher Court.

A very recent case has decided that a shooting tenant who does not hire the land itself is in the same position as an owner, and accordingly can set traps otherwise than in rabbit holes without incurring any penalty (May v. Waters, 1910).

It will thus be seen that the Act may press hardly on some occupiers. Take, for instance, the case of a market gardener, who hires his land, of course, without any reservation of game. He is, possibly, troubled by an incursion of hares and rabbits, which make short work of his young cabbages and lettuces. He may set snares in the hedge for the hares, as he could do before the Act, but he may not set spring traps for the rabbits, or lay poison for them; nor may he go out on a moonlight night and take shots at them with any species of firearms, all of which privileges have been taken from him without any rhyme or reason.

With regard to moorlands and uninclosed grasslands, it will be remembered that the occupier's rights under the principal Act could only be exercised from the 11th of December to the 31st of March inclusive. This was evidently a concession to the grouse shooters, but its application is extended far beyond what is necessary to protect grouse moors. The Amendment Act, as we have seen, has extended the rights of occupiers of such land, who may now take ground game by traps in rabbit holes, snares or nets, from the 1st September to the 10th December inclusive,

but must not during that period use firearms except, of course, under an agreement with the landlord or shooting tenant.

The terms of the sub-section of the principal Act dealing with unenclosed land are wide enough to embrace within its scope the greater part of every mountain in the United Kingdom, as well as all the sandhills on the coast, and all the large village commons. Questions are not very likely to arise with regard to the two latter, as in practice they are not often let, and the sandhills are usually let for the purpose of sporting only.

But the restriction also applies quite needlessly and unfairly, as we consider it, to any piece of uninclosed grassland which is twenty-five acres or upwards in extent, or which, if of less area, is not adjoined by any arable land. In a previous edition of this book we said we had in mind at the time of writing an unfrequented country road, along which there ran on one side a belt of uninclosed land, partly pasture and partly wood, in area upwards of twenty-five acres, and the tenant of the farm in which it is included, who had arable land running right up to it, was debarred from killing a single head of ground game on this (the uninclosed) land at the only time when he needed the protection of the Act, viz., when his crops were about. The place teems with rabbit burrows, from which the bunnies pop out into the tenant's crops. If the tenant could only catch them there, it is well, but woe betide him if he killed one after it had passed through the hedge which separates the "inclosed" from the "uninclosed" land. As in this particular instance the landlord (being a hunting man) thoughtfully inserted a provision in the lease that the

tenant should put up no wire-netting on the farm, the tenant (who was a stranger to the land when he took the farm) had practically no way of protecting himself. The Amendment Act has not given this particular tenant much relief, as by the 1st September, the earliest date at which he can now trap the rabbits, his crops, if not harvested, are at least in great part cut and shocked.

Then, again, we sometimes find included in a farm a small uninclosed spot, perhaps where two quiet country lanes meet—a matter of a few acres only, with perhaps a few gorse bushes and a hollow where, years ago, some gravel was excavated. Maybe it makes a nice little bit of pasture for a cow or two, or a pony. It is a likely spot for rabbits to inhabit, and it may so happen that the proximity of the keeper's cottage prevents them being poached. What is the farm tenant's position? If he has a ploughed field over the hedge he can keep the rabbits down, but if the field is pasture, he is not allowed to take rabbits before the 1st September or after 31st March, and it matters not that there is a ploughed field on every side of the pasture, and within easy travelling distance for the rabbits.

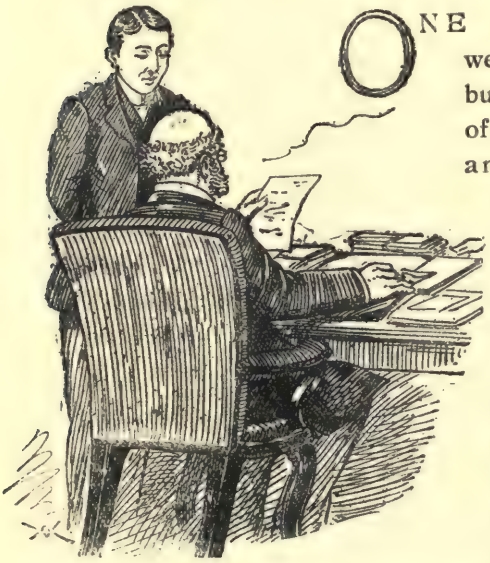
The last point we have to notice with regard to this interesting statute, is the reservation it contains in favour (chiefly) of lords of manors. Section 5 provides, amongst other things, that "nothing in this Act shall affect any special right of killing or taking game to which any person other than the landlord, lessor, or occupier, may have become entitled to before the passing of this Act, by virtue of any franchise, charter, or Act of Parliament.

This clause is evidently aimed at preserving for lords of manors and owners of franchises the exclusive right which they may have acquired under Allotment Acts and Charters.

The question has been mooted, but not decided, whether the section only extends to the persons who were the owners of such rights at the time the Act came into operation, and not to their successors in title, or whether it preserves the rights for future generations. The words of the Act might be restricted to the former sense, but we venture to think the intention of the Legislature was that they intended to benefit successors in title.

CHAPTER VII

CAN ANYONE SHOOT GROUND GAME WITHOUT A LICENCE?



ONE morning we were exceptionally busy upon a matter of no small importance, when our clerk brought us a letter announcing that Mr. Strawless would call at twelve o'clock, and he (Mr. Strawless) hoped we would consult the authorities, and advise upon the question which heads this chapter, "Can anyone shoot ground game without a licence?"

We knew Mr. Strawless of old; he was one of those clients who constantly pester their legal advisers with knotty points of minor import, and, when the conundrums have been answered satisfactorily, say, in an off-hand manner, "Well, you surely won't expect me to pay a fee for a mere trifle like that," whilst possibly an hour or

more has been wasted from the very busiest part of the day. Generally it leaked out that Mr. Strawless had risked a substantial wager upon the point in question, whilst it was a well-known fact that he had a weakness for gambling upon the latent ambiguities of sporting law.

On the morning in question we were really annoyed at the interruption of our labours, and instructed our clerk to inform Mr. Strawless we should be engaged until 4 p.m.; but as he was shutting the door of our sanctum after him, second thoughts commended an interview. We accordingly hunted up the statutes bearing on the point, and when Mr. Strawless called at noon were quite ready for him, and in our own mind were determined to cover everything he could possibly touch upon.

"How do you do, sir? I shan't detain you a second."

"Yes," we thought to ourselves, "they all say that when they mean to be 'sitters,' and take up more time than they really ought to;" adding aloud; "Well, I was *rather* busy this morning, but I have the point at my fingers' end this time. I think you said, 'Is it necessary for a farmer to have a gun licence to shoot hares and rabbits with?'"

"Yes," replied Mr. Strawless, "that's it. Harcourt's Act says—"

"Oh, yes, the Ground Game Act contains a section which enacts that no licence to kill game is required; but then there is mention in that section of the Gun Licence Act, 1870," and turning to "Chitty's Statutes," which we have ready at hand, we read out *in extenso*, Sec. 4 of 43 and 44 Vict. c. 47, as follows: "'The occupier and the persons duly authorised by him as aforesaid shall not be required to obtain a licence to kill game for the purpose

of killing and taking ground game on land in the occupation of such occupier, and the occupier shall have the same power of selling any ground game so killed by him, or the person authorised by him, as if he had a licence to kill game; provided that nothing in this Act contained shall exempt any person from the provisions of the Gun Licence Act, 1870.' And by sec. 8 of the same Act the words 'ground game' means hares and rabbits. But we must go back to the older Acts, Mr. Strawless. Let me see—what was the date of the Hares Act? Ah, yes—passed in 1848. It was an Act to enable persons in the actual occupation of any inclosed lands, or the owners thereof, etc., to kill hares in England and Wales by themselves, or persons authorised by them, without being required to take out a game certificate. Then there is another Act of the year 1860, which was passed to impose, in lieu of the duties on game certificates, duties on excise licences, and certificates for the like purposes. By sec. 5, sub-sec. 2, of that Act, the taking or destroying of conies in Great Britain by the proprietor of any warren, or of any inclosed ground whatever, or by the tenants of lands, either by himself or by his direction or permission, also (sub-sec. 3) the pursuing and killing of hares respectively by coursing with greyhounds or by hunting with beagles or other hounds, does not render the person engaging in either of these sports liable to take out a licence to kill and deal in game. But upon the point which more particularly interests yourself, Mr. Strawless—Is it necessary for a farmer to have a gun licence to shoot hares and rabbits?—we must turn to the Gun Licence Act, 1870. Here it is. Section—section—ah, yes—section 3 says:

'After the first day of April, 1870, there shall be granted and paid unto and for the use of Her Majesty, her heirs and successors, for and in respect of every licence to be taken out yearly by every person who shall use or carry a gun in the United Kingdom, the sum of ten shillings."

We are determined Mr. Strawless shall have full value for his money on this occasion, and whenever he attempts to interrupt us we motion him to silence, and pour section after section of these dry old Acts of Parliament into his ears, filling up the gaps whilst we turn over the pages for the next connecting link in the chain of legal reason on his question by a running comment on what we have previously read.

"In this Act the term 'gun' includes a firearm of any description, an airgun, or any other kind of gun from which any shot, bullet, or other missile can be discharged. This definition would appear to include a cross-bow, and there would be no getting away from the enactments of the Act were it not for the exceptions, which exempt the following persons—" and without looking at Mr. Strawless, whom we have now apparently quite overawed by our long-winded discourse, we continue to read out sec. 7, sub-sec. 2: "'Any person having in force a licence or certificate to kill game granted to him under the laws of Excise in that behalf. Sec. 7, sub-sec. 3: By any person carrying a gun belonging to a person having in force a licence or certificate to kill game, or a licence under this Act, and by order of such licensed or certificated person, and for the use of such licensed or certificated person only, if the person carrying the gun shall, upon the request of any officer of Inland Revenue or constabulary, or any constable, owner or

occupier of the land on which such gun shall be used or carried, give his true name and address, and also the true name and address of his employer. Sec. 7, sub-sec. 4: By the occupier of any lands using or carrying a gun for the purpose only of scaring birds, or of killing vermin on such lands, or by any person using or carrying a gun for the purpose only of scaring birds, or of killing vermin on any lands by order of the occupier thereof, who shall have in force a licence or certificate to kill game, or a licence under this Act."

We here pause for a breathing space, but Mr. Strawless does not avail himself of the opportunity offered, and we add: "And now, sir, you ought to know the law on the point you have raised thoroughly in all its bearings. There only remains to be mentioned that no case has yet been decided which defines the true meaning of the word 'vermin,' but the authorities seem unanimous that it does not include 'hares and rabbits.'"

"So it's not certain, then," blurts out our client, with a very blank expression of countenance, "and you can't write me a letter giving the law on the points definitely one way or the other?"

"No; I can only give you an opinion, as I have already done, and if you take the opinion, you'll put that wager down as a drawn bet."

"How do you know I had a bet on it?" ask Mr. Strawless, in astonishment; "has Mr. Hardup been here before me?"

"Oh, no; and I do not aspire to be a Sherlock Holmes, but it was easy for me to arrive at conclusions, which, seemingly, are not far from the mark; and, if you have no objection, I prefer to keep my method to myself."

Such an expression was not unusual to us. Our clients frequently wondered at our reading between the lines, or at the discovery of reasons which they often tried so hard to keep in the background; but long experience and a daily intercourse with men of every variety of disposition causes this faculty to be developed. Were we to explain how it was that two and two were put together, it would appear simple enough, but by not doing so their estimation of our ability and astuteness rose to our advantage.

For some considerable period Mr. Strawless remained seated in deep thought. At last he looked up with an enlightened countenance.

"Those Acts of Parliament you read out to me all said 'licence to kill game' and 'game licence.' Now, what is the reason for that? Supposing I went on to a public common, where I only had the right to walk about, and I shot a rabbit, surely you don't mean to say I should want a licence to kill game for that?"

"Oh," we thought, "it's your intention to get even with Mr. Hardup under this heading, is it?" and aloud we added: "In that case the law is clear enough, and you would certainly require a 'licence to kill game,' although the usually wide-awake officers of the Inland Revenue Office seem to ignore the fact; and in order that you may be saved the necessity of again consulting us, we will give you the authority. The Act of 1860, to which we have already referred, by Sec. 4 enacts 'That every person, before he shall in Great Britain, take, kill, or pursue, or aid and assist in any manner in the taking, killing, or pursuing by any means whatever, or use any dog, gun, net, or other engine for the



"Mr. Strawless beamed upon us."—p. 97.

purpose of taking, killing, or pursuing any game, or any woodcock, snipe, quail, or landrail, or any coney, or any deer, shall take out a proper licence to kill game under this Act, and shall pay the duty hereby made payable thereon; and if any person shall do any such act as heretofore mentioned in Great Britain without having duly taken out and having in force such licence as aforesaid, he shall forfeit the sum of £20.' There are, of course, exceptions, but they do not apply to the case you have stated."

Mr. Strawless beamed upon us.

"I don't mind paying for that advice; I'll take good care to make a profitable investment out of it."

So saying, he dived into his pocket and handed us a guinea, showing a spirit of liberality which was quite unusual to him, and rising hastily, he left without another word.

CHAPTER VIII

THE SPORTSMAN AND HIS DOG



WE are not, as readers might suppose from our title about to put on record another instance of the faithfulness and sagacity of the canine race — how our faithful setter, Nero, behaved when we were lost in a fog on a large and dangerous grouse moor, or even how our good old retriever, Curly Bob, once in a strange country returned a distance of three miles to our lunching place to fetch a tobacco pouch we had unwittingly left behind, and brought with it a solitary unstruck wax match which we recollected having dropped on the ground beside a number of spent matches with which we had tried unavailingly to light our pipe in a strong wind. We are

merely going to discuss some of the liabilities which attach themselves to the ownership of dogs, considered chiefly from a sportsman's view.

To sum up at the beginning, so long as our dog behaves himself as properly-brought-up dogs should, we are, of course, under no liability to anyone, for the simple reason that the properly-behaved dog never injures anyone. But we may go further than this, for if our dog usually exhibits decorous and well-bred behaviour, we are not to be held liable if he so far forgets himself as for once in a while to give way to sudden impulses, and outrage the proprieties of educated dogdom.

To take a simple instance: If you enter another man's land without his permission, and without any legal right, you are guilty of a common law trespass, and are liable to an action for at least nominal damages; and if you do any actual damage, you render yourself liable to the more summary remedy of a summons before the magistrate for malicious damage. If, however, you are walking along a road with your dog, known or believed to be a good-behaved one, you are not liable for any little excursion he may take on his own account, and without any incitement from you, into neighbouring land, even though substantial damage may result to another man.

To take an instance that was before the Courts in a reported case: A Newfoundland belonging to A. had been taken out for a walk by the latter's friend B., and in returning to A.'s house, the dog suddenly took it into his head to make an exhibition of his jumping powers, and leaped a fence into a garden adjoining his master's. Unfortunately, he alighted on the back of a man who was digging a hole in the neighbour's garden, and

seriously injured him. The latter brought an action against the dog's owner, A., and against B. as the person in charge of the dog; but it was held he could not recover anything, the dog having jumped without the will or consent of his master or of B., and without any incitement (Sanders v. Teape, 1884).

There is an old maxim, "Every dog is entitled to one bite," which, though not literally correct, contains a great many grains of legal truth. If, however, the owner incites his dog to do damage or even to enter another man's land, it is different, for in this case he is liable to make good any damage that may result. If no visible damage is committed, the occupier of the property into which the dog trespasses would still have the right to recover nominal damages in a civil action, if he thought it worth his while to bring one.

A practical illustration may help our readers to a due appreciation of the difference between the case where the dog acts in obedience to his master's orders, or is at least incited by the latter. We were one day at a small shooting party—a very small one, for there were only our host, whom we will call Mr. A., ourselves, and a young friend, whom we will refer to as Mr. Z. We had two dogs, Mr. A's retrieving setter and Mr. Z.'s retriever, both well-trained dogs. We had spent the morning walking up birds, and at mid-day had sat down to a well-earned lunch. The spot selected was unfortunately at the end of a field, adjoining which a neighbouring farmer had his sheepfold.

Whilst we were busily engaged in looking after the inner man, a hare ran across the field in the direction of the aforesaid farmer's land. There was no time for

any of us to pick up a gun to fire, but our young friend Mr. Z., exhibiting an indiscretion which only lack of years and experience could atone for, set his retriever on the track as the hare was crossing the boundary fence. "After him, Jack—loo, loo, good dog—evens on the dog," he shouted excitedly. This was too much for Mr. A.'s dog, which also started in pursuit. Mr. A. was furious, as well he might be, and he called young Mr. Z. all the names an extensive vocabulary could command. In vain he tried to whistle his dog back, but it took no notice of his master's whistle or voice, and before we had time to think of the consequences, both dogs were running across the next field, alongside the farmer's sheepfold.

In due time the dogs returned, very much exhausted, and looking rather ashamed of themselves; but the result of their rush across the adjoining field had been disastrous to the sheepfold. The farmer was expecting some early lambs to arrive in about a fortnight's time. Unfortunately, ten of them made their appearance into the world that same day, and eight of the ten made their exit in the evening. The farmer was naturally very wroth, and made a claim on Mr. A. The latter, thinking the claim was extortionate, but not wishing that his neighbour should suffer, offered him half. This was refused, and the farmer brought an action in the County Court against Mr. A. and Mr. Z. as the owner of the two dogs.

We were summoned as a witness on behalf of the farmer. The latter proved the damage he had suffered, and, on examination and cross-examination, we stated the facts as to the starting of the dogs as above set out;

and, as we afterwards had the honour of knowing, the judge accepted our statement implicitly—that both dogs were well trained and invariably well-behaved dogs, and absolutely obedient to their masters' commands; that Mr. Z., in a moment of thoughtlessness, urged his dog to follow the hare (we would have shielded our young friend if we could in any way have done so honourably), but that Mr. A., so far from exciting his dog, at once endeavoured to recall him. We were asked whether, if Mr. Z. had not urged his dog to follow the hare, Mr. A's dog would have pursued her, and we replied, "No; it was very unlikely he would have done so from under his master's eyes. At any rate, even if he had started up, he would almost certainly have come back to his master's call if he had not been excited by the other dog."

His Honour the judge intimated that, after our cross-examination, he did not require to hear the defendants themselves, as they accepted our evidence as correct. They, therefore, merely called some expert evidence to prove that the amount claimed for damages was excessive. At the conclusion of the case the judge, without hesitation, gave judgment for the plaintiff against Mr. Z., but dismissed the action against Mr. A. It was satisfactory to the latter gentleman that the damages awarded to be paid by Mr. Z. were slightly less than the amount Mr. A. had previously offered to the farmer.

As we shall show at more length later on, a man, standing on the highway, may commit a trespass in pursuit of game by sending his dog on to the adjoining land without entering it himself. The question whether a trespass in pursuit of game is committed by one who with his dog follows a rabbit from his own land on to

another's is also dealt with elsewhere. With regard, however, to coursing, the Game Act, 1831, expressly enacts that "the provisions against trespassers and persons found on any land shall not extend to any person . . . coursing on any lands with . . . greyhounds, and being in fresh pursuit of any . . . hare already started upon any other land" (Section 35).

It will be noted that the section only relates to hares and to coursing with greyhounds. The effect of the section is that, once the hare has crossed the boundary of the man's land on which she was first started, the coursers are safe from a prosecution for trespass in pursuit by any other landowners or occupiers. In other words, it is only the person on whose land the hare was found who can take proceedings under the Act. If the coursers had a right to be on that land they cannot be convicted of trespass in pursuit at all.

They might, but for a somewhat similar exception in the Malicious Damage Act, 1861, be proceeded against before the magistrates for damage done to the land or fences. The provisions of that Act, however, are not to extend to "any trespass, not being wilful and malicious, committed . . . in pursuit of game" (Section 52). These two sections, however, do not relieve the coursers of their liability to make good any damage they may cause, for each one of them is liable to be sued for trespass in a common law action, and the damages may be recovered against any one of them at the option of the person who suffers the loss; or he may sue the whole party jointly.

Whether the section of the Game Act quoted applies

to lurchers, the species of animal most used by poachers, may possibly be open to question. They are, doubtless, descended from greyhounds, with certain crosses, but may, we think, be considered at the present time as an almost distinct species. On the other hand, to limit the section to those dogs only which have a pure greyhound pedigree would be, to a very great extent, detracting from the benefit of the provision. It is, of course, a question of fact for the particular bench of magistrates before whom the summons comes whether the dogs used were greyhounds or not, and magistrates, being all human, and many of them landowners, are inclined to construe the section strictly or broadly, according to the character of the person charged.

We have dealt with cases where there was incitement on the part of the master, and have seen that, as a rule, where there is no incitement, there is no liability. The exception is where the dog has, to the owner's knowledge, previously exhibited a mischievous tendency of a similar nature. To render the owner liable there must be this knowledge, known to lawyer's as "scienter," on the part of the master. This is the origin of the old but fallacious saying that a dog is entitled to one bite. To this exception there is another exception, which we will refer to later.

It does not matter what the particular form of vice or mischief exhibited by the dog is, the master is liable for the consequences of such vice or mischief if he knows that the dog has previously been guilty or shown signs of misbehaviour of a similar kind, and has not taken reasonable precautions to prevent a recurrence of it.

Most owners of shooting preserves are troubled at times with stray dogs chasing and killing the young pheasants, and not infrequently a very large amount of poults are lost in this way, and their owner not unnaturally feels that if the dog has got off scot free, its owner, at least, ought to suffer. The question whether he can substantiate a claim must be decided by the rule above laid down—Had the dog previously shown a disposition to chase and kill game, and did the owner know this? If these questions are answered in the affirmative, the owner is liable to pay for all the damage done by the dog; if in the negative, he is under no liability at all (Read v. Edwards, 1865). And it lies on the person whose pheasants are killed to prove the affirmative.

The law is precisely the same in the case of a dog biting anyone. The bitten person must prove that the owner knew of the dog's dangerous disposition.

It is not necessary to prove that the dog has to the owner's knowledge actually bitten, or attempted to bite, anyone. It is sufficient to show that it had a ferocious disposition toward human beings and that the owner knew of this. Thus if a bitch, ordinarily quite well behaved, becomes to the owner's knowledge ferocious when she has pups, the owner may be liable for damages even though the bite be the first one which she actually inflicted. (Barnes v. Lucille 1907.)

What we have called the exception to the exception is contained in the Dogs Act, 1906 (repealing and re-enacting a Statute of 1865), which provides that, if a dog does injury to sheep or cattle (which includes horses, mules, asses, sheep, goats and swine), it shall not be necessary to

prove "scienter" on the part of the owner. For all such damage the latter is liable, as a matter of course. And it has been held that the owner is liable notwithstanding the sheep had strayed on to his land and were bitten or worried there and not on their owner's land (Grange v. Silcock 1897).

It is, as we all know, a common practice for sportsmen and gamekeepers to shoot dogs and cats seen in the woods or anywhere in the neighbourhood of the game, and the shooter very rarely stops to inquire whether such shooting is justifiable. There is no proposition of law clearer than this—that no one can justify shooting or killing a trespassing dog merely because it is trespassing; nor is the fact that it has been destroying game any justification. This was settled in the old case of Vere v. Lord Cawdor in 1809, which went even further, in deciding that mere proof that the dog was running after a hare was insufficient to excuse a gamekeeper shooting it. As Lord Ellenborough, in that case, said, "a dog does not incur the penalty of death for running after a hare in another man's ground, and if there be any precedent of that sort which outrages all reason and common sense, it is of no authority to govern other cases."

The act of killing a dog may probably be justified if it can be shown that the dog was chasing, or in the act of killing, any preserved game, and that it was necessary to kill the dog in order to save the game. How often this proof can be given it is hardly necessary to ask. Of every hundred dogs that are shot by sportsmen and gamekeepers, not more than one or two, we should say, are killed under circumstances that the law considers justifiable. As to cats, to which the same

rules apply, we should say there never has been one shot whose death was legally justifiable. You can always frighten a cat that has not actually seized the game, although shouting, or the like, may sometimes not be effectual with a dog. The only case we can conceive in which the shooting of a cat could be excused on the ground of necessity is where the cat is running away with, say, a live poult in its mouth, and the shooter kills the cat and not the poult, and the latter's life is actually saved.

A somewhat similar case, but one in which the shooting was not justifiable, came under our notice some time ago. A man, who had lost a lot of farmyard chickens from his yard, one day saw a neighbour's cat running across his yard with a chicken in its mouth, and acting on the impulse of the moment, having his gun at hand, he very naturally shot the cat. The chicken was found to be dead. The cat's owner promptly sued the shooter for damages. In the County Court the latter argued that he shot at the cat to save his chicken, thinking the chicken might be alive. The judge, however, held the shooting to have been unjustifiable, and gave a verdict for the plaintiff for £1, the value of the cat, and costs, and we do not doubt he was right in law. We confess we have never heard of a case such as we have supposed, when the life of the animal was actually saved after having been in the cat's mouth, though perhaps some of our readers have.

We have only dealt with the *civil* liability to damages for shooting a dog or cat. There is also to be considered the question of a possible liability to prosecution either under the Malicious Damage Act, 1861, for maliciously killing or wounding, or under the Prevention

of Cruelty to Animals Act, 1849, for cruelly ill-treating or torturing the animal in question,

In case of a prosecution under the former Act, if the Court is satisfied that the dog or cat was actually killed or wounded by the defendant, the latter's only chances of escape from a conviction would seem to be limited to his proving one of two things, either (*a*) that he intended to shoot either above, behind or to the side of the animal with the intention only of frightening it, and that it was actually hit by a stray shot or two which could not have been reasonably anticipated—this would usually be a very weak defence—or (*b*) that he shot at the animal in the *bonâ fide* belief that it was necessary to protect his own or his employer's property [or some preserved game in which there was a qualified right of property], and that he thought there was no other way of protecting it. (Miles v. Hutchings, 1903.) The case cited was one in which the property in question was tame or at least penned pheasants, but it is submitted that the words interpolated in parentheses [ ] extending the ground of the decision to preserved game at liberty are probably justified as a correct statement of law, but the authorities are not altogether clear.

The penalty under this Act for a first offence is not exceeding £20, in addition to the damage suffered by the owner of the animal.

Under the Prevention of Cruelty to Animals Act (where the penalty is not exceeding £5) the shooting of a trespassing dog or cat will lead to a conviction, if the Justices find as a fact that there was an intention to ill-treat or torture ; each case being a question of degree for them to determine. (Armstrong v. Mitchell, 1903.)

The Dogs Act contains provisions authorising the police to seize stray dogs (which includes dogs found not wearing a collar with the name and address of the owner, as prescribed by an order made by the Board of Agriculture and Fisheries), and for their sale or destruction unless claimed and expenses paid within seven clear days after service of notice on the owner, or after seizure if the owner is unknown. (Section 3.)

A further important provision is that contained in Section 4 rendering liable to fine, not exceeding 40s., any person who, having taken possession of a stray dog, fails forthwith either to return it to its owner or to give written notice to the Chief Officer of Police for the district.

The Dogs Act, 1871, as extended by Section 1 (4) of the Act of 1906, empowers Justices to order to be kept under proper control or destroyed any dangerous dog, including one which is proved to have injured cattle or chased sheep.

The owner of a shooting, or his keeper, has no more legal right to seize or shoot the dog of a poacher which he surprises on a poaching expedition than he has to take a dog that has strayed on to his land without its owner's knowledge. One exception, however, to this rule is created by the Game Act, 1831 (Sec. 13), which empowers the lord of a manor, lordship or royalty, to authorise his gamekeeper, under his hand and seal, to seize dogs that are being used for taking the lord's game within the limits of the manor.

Without taking account of the exception last mentioned, which is of minor importance, we may say that the general rule of law appears to be that no man

may justify killing a dog (or cat) in defence of his game, unless he can show that, but for his killing the dog, the game must have been killed; that there was no other way of saving it. We are bound to admit, however, that we cannot altogether reconcile this rule with an old decision, which lays down the law as to dog spears.

A., with his dog, was walking along a footpath in B.'s field. A rabbit ran across the path, and the dog started after it. As the dog was going into a wood, it ran on a dog spear and was killed. A. sued B., but although it was admitted that B. set the spear for the purpose of killing dogs in pursuit of game, it was held he was not liable (Jordin v. Crump, 1841).

Of course, it is a rule of law that when a person, and it follows therefore an animal, is trespassing, he takes the risk of all pitfalls he finds on the property, except such as the owner is absolutely forbidden to erect. That we can all understand; but why a man should be permitted to place spears for the express purpose of killing trespassing dogs, when he may not use his gun for the like purpose, is one of those mysteries of the law we have been unable fully to appreciate.

A man may also set traps for dogs and cats, and may bait them with strongly-scented meat such as their hearts love; but the baits must not be so near the highway, or his neighbour's land, that they can be scented beyond his own boundary. He is not entitled to tempt dogs or cats to their doom from outside his own fence. If he does, he is liable in damages to the owner of the animal killed or injured. (See cases cited in Oke, 4th edit., p. 118.)

It is illegal to lay poisoned meat on land, except when

laid for the destruction of rats, mice, or other small vermin, in—(*a*) an enclosed garden attached to a house; (*b*) drains connected therewith, and fenced against dogs, or (*c*) ricks or stacks. (Poisoned Flesh Prohibition Act, 1864, Sec. 3.) Penalty not exceeding £10. The person laying poisoned flesh is also liable to a civil action in respect of any dog or cat killed by it.

The subject of licences to keep dogs is dealt with in a later chapter.

There is nothing that annoys a keeper more than having his game stolen by a trained lurcher belonging to one of the village poachers. We are reminded of a story which may perhaps interest the reader, and at the same time prove instructive.

An Interview.

"Yes, Sir John, you are right; it is indeed a beautiful morning. But what brings you up to town? Nothing wrong at home, I hope?"

"No, no, Mr. Six-and-Eight," cheerfully answers our client (Sir John Rocketter), "only there is an old maxim which I always like to be on the weather side of. It runs, 'Forewarned, forearmed,' and I want to know your opinion on rather an amusing point. You know, I believe, that new keeper of mine on the Foxhill's beat,—an Irish chap, rather hot-headed and quick to act, without thinking so much of the consequences?"

We silently nod our acquiescence.

"Well, he has been awfully annoyed this year by a loafer from Sedgemere. I don't know the blackguard's name, but he's got an exceptionally clever lurcher that picks up our hares anyhow, and poor Patrick O'Leary was at his wits' end to know how to catch the pair of

them *flagrante delicto*, as I think you lawyers are in the habit of putting it when you come before the Bench."

We smile again, and our client proceeds:

"Now there is thunder in the air, and Pat's life has been threatened by the scoundrel, because Pat proved one too many for him at the game of bluff. It was like this. Pat happened to stroll into the 'Sportman's Arms' at Sedgemere last Saturday night on his way home, and who should be standing outside but this very man, accompanied by several equally choice blackguards as himself, and the lurcher. Pat, who bears no malice, and is ever ready for a joke, began to chaff him about the value of his dog, and the man retaliated in a similar strain. Of course, I can only tell you what I remember to have been told about it, but after a running fire of complimentary (?) remarks upon its breed and staying powers, Pat asked the price of the dog, and the man, without thinking, said, 'Well, as *you* are such a pal of mine, and the dog would be of more service to you than to anyone else, I'll say sixpence *to you*.' Whereupon Pat, as quick as lightning, says, 'Done wid ye at the proice, begorrah!' and before anyone could realise it, he had snatched his gun from his shoulder and shot the dog dead, and tossed a sixpence to the man, who was too much overcome with astonishment and rage to speak or move.

"Naturally, a fight ensued, in which Pat again came out on top," continues Sir John. "Now he has gained the life enmity of a dangerous foe, who not only threatens to do for him, but also to bring an action against me for damages for the loss of his dog."



"An exceptionally clever lurcher."—p. 112.

"Very smart indeed," we murmur to ourselves; adding aloud: "What did you do, Sir John, when Pat told you his story?"

"What did I do? Why I gave him a sovereign, told him I was delighted, then I came over here to make sure I was on the right side. I trust you are of the same opinion, Mr. Six-and-Eight."

"I am pleased to be able to say at once that I am, Sir John. Without a doubt there was a trick, and it was very sharp practice; but it is said that all is fair in love and war, and if the man was fool enough to give himself away like that he must abide by his own folly. I do not think you will hear any more from him on the matter, though, should he and his companions meet Pat alone on a dark night, it may go hard with Pat."

"I have no fear there," replied our client. "Pat is a wild Irishman from Connemara, and is quite capable of taking care of himself if attacked by half a dozen of those gentlemen at once, whilst, if you asked him, he would inform you that he would thoroughly enjoy such a barney."

Our client was now in very high spirits.

"I would have given ten pounds for that dog, Mr. Six-and-Eight, rather than let it continue to live in Sedgemere, and now I come to think of it, I was not half generous enough to poor Pat. I must make it a fiver to him—I really must. It was so smart—so d—d smart," and slapping his knee, he rose, bade us good morning and departed, still chuckling to himself as he passed through the outer offices into the street.

Dogs in the Train.

Sporting dogs are so frequently consigned to a railway company for transit, that we need make no apology for spending a short time on the consideration of the liability of a company for injuries caused to a dog in course of transit. It is common knowledge that railway companies, like other "common carriers," are insurers of the goods they carry, and, as such, are said to be liable—in the somewhat quaint language of the law—for all damage and injuries save such as are caused by "act of God" or the King's enemies. This rule, however, is subject to a good many limitations which have been imposed by statute, and moreover, only applies to such goods as the carriers profess to carry or are bound to carry. Now, at common law, railway companies are not common carriers of dogs, and were it not for their statutory duty, of which more presently, they would not be compelled to take dogs at all unless they felt so disposed.

The regulations and conditions as to the carriage of live animals adopted by all the leading railway companies, contain a clause which runs as follows, or to much the same effect: "The (London and North Western) railway company are not, and will not be, common carriers of horses, cattle . . . and dogs or other quadrupeds . . . and receive, forward and deliver the same solely on and subject to the following conditions! The company will not be responsible for the loss of or damage or delay to horses, cattle, or other quadrupeds . . . occasioned by any cause or means whatever, except upon proof of neglect or default of the company or their servants, nor will they be responsible in any case for

a greater amount for loss, injury, or delay of or to any such quadruped . . . beyond the following sums, viz., . . . dogs, £2 each . . . unless a higher value be declared at the time of delivery to the company, and a percentage of 1¼ per cent. paid upon the excess value so declared."

The first few words of this notice are merely an expression of the law as we have stated it above. The latter part has been framed to meet the provisions of, the Railway and Canal Traffic Act, 1854. This Act provides, in the first place, that railway companies shall afford all reasonable facilities for receiving, forwarding, and delivering traffic without delay, and "traffic" is defined as including animals. Then it goes on to provide (by section 7) that a company shall be liable for the loss of or injury to . . . any animal in the receiving, forwarding, or delivering thereof, occasioned by the neglect or default of the company or its servants. notwithstanding any declaration to the contrary. But there is a proviso that, notwithstanding this declaration of liability, a company may make such conditions as the court or judge, before whom any question relating thereto shall be tried, shall consider just and reasonable. There is, however, a further proviso that any "special contract" must be signed by or on behalf of the person consigning the animal to the company.

The result of the Act, therefore, is (as far as the subject in hand is concerned) that a railway company is now bound to carry dogs—at least, if they have facilities for doing so—but is not an insurer of them, being only liable for injury caused by the negligence or default of its servants, and may make conditions limiting that liability, but (1) *such conditions must be reasonable, and*

(2) *there must be a memorandum signed by the consignor or his agent* (per Lopes, J. Dickson v. G. N. R. Co., 1887). This, then, is the origin of the latter part of the clause we have quoted from the railway time-table. It is what the company deem a reasonable condition, that a consignor should pay a percentage on the value of the animal above £2.

The case of Dickson v. the G. N. R. Co. is instructive on this point. The plaintiff in that case had entered his greyhound for the Gosforth Park Stakes, and booked the dog from King's Cross to Newcastle. The dog arrived safely at the latter place, but while on the platform a porter negligently ran a truck over its tail and broke it. The plaintiff's man who took the dog to King's Cross signed a ticket containing a condition to the effect that the company would not be liable for any injury whatever above the value of £2, unless the value of the dog was declared, and 5 per cent. paid on the excess. The man said nothing about the value, and only paid the ordinary fare. The plaintiff brought his action to recover the full value of the dog, and the Court of Appeal held he was entitled to it on the ground that the percentage demanded was excessive. It was pointed out that, if the company got 5 per cent. on the value besides the ordinary fare, they might with impunity kill one dog in every twenty, which, on the face of it, sounds absurd. As, therefore, the only alternative given to the plaintiff was the payment of an excessive sum by way of insurance, the conditions on the ticket were held to be unreasonable, and therefore not binding.

The 1¼ per cent., to which, by common agreement, the leading railway companies reduced their excess rate

after the decision in the Dickson's case, has been held by the Court of Appeal to be reasonable; and if the sender of a dog or his servant or agent signs a ticket with a condition on similar to the one we have quoted at length, he will be bound by it, and the limit of the amount he can recover will be £2, or whatever value he has paid the extra percentage on. (Williams v. Midland Railway Co., 1908.)

If the condition is not signed, he can recover the full value of the dog, or to the full extent of the injury, whether he has paid a percentage or not, provided the injury was caused by the negligence or default of one of the company's servants. It will be noticed that, in the condition quoted, the company disclaims liability, except upon proof of neglect or default, etc. This might seem, at first glance, to be a somewhat unfair condition to impose, for how is the unfortunate owner of a dog that has been lost or injured, he knows not where, to obtain evidence of how the dog was looked after at all points along the line between the station where it was safely delivered to the company for transit, and the address at which it ought to have been safely delivered to the consignee? There is a well-known rule of law, however, which is expressed in the motto, "Res ipsa dixit," or, to put it in plain English, if, in the ordinary course of events, things would not have happened without the negligence of a certain person, it lies on that person to show that, owing to some extraordinary course of events, the happening of the thing in question was not due to his fault.

In accordance with this rule, it has been decided in an Irish case that, if a dog (in the case in question it was a

pig, but the same reasoning would apply) consigned to the company was lost in transit, it was not sufficient for the company in defence to put in a signed contract freeing it from liability except on proof of negligence, and that in default of any explanation at all by the company, the latter was liable to make good the loss (Curran v. M. G. W. R., of Ireland, 1896).

The same reasoning would apply to any injury which, in the ordinary course of events, would not have happened without negligence on the part of the persons having charge of the animal. In such cases, therefore, the company is liable, unless it adduces evidence to show that the loss or injury occurred without neglect or default on the part of itself or its servants. If, for instance, the company proves the dog was stolen, or was injured by someone not in its employ, the company is not liable, and the owner must put up with the loss, unless it appears that ordinary precautions were not taken to prevent such thefts or accidents.

To take one or two more specific instances: If a porter is leading a dog along a platform, and is holding its chain so carelessly that, with a slight pull, the dog escapes, and, getting on the line, gets run over, this is negligence for which the company is answerable (subject to any reasonable signed contract as to declared value). If, on the other hand, a porter is leading a large, powerful dog, such as a Newfoundland or boarhound, and the dog pulls so hard, that the porter, try as he will, cannot hold it, and it escapes or is killed or injured, then the company is not liable, even for £2. Again, if the collar on the dog, when the owner sends it to the station, is so loose, or the chain so rotten, that the dog slips its head



"If a porter is leading a dog along a platform."—p. 118.

through the collar or breaks the chain, and is lost or killed, this is the owner's fault, and not the company's, and the owner must bear the loss (Richardson v. N. E. R. Co., 1872).

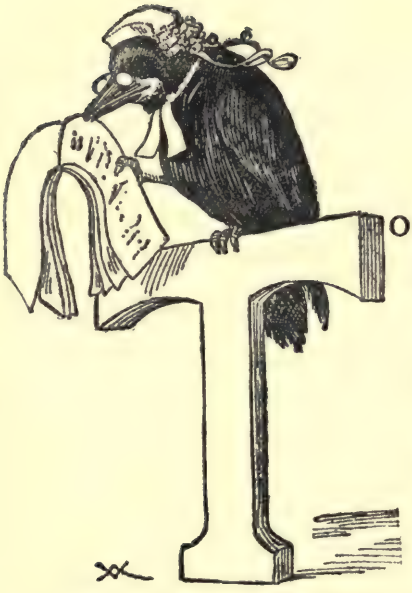
We believe there are still some companies who, in their regulations for the carriage of dogs, stipulate for a ticket being signed only if the value is declared, and is above £2. What the use of such a condition is we fail to understand, unless it is to deceive the unwary dog owner who does not take competent legal advice before settling his claim against the railway company. No doubt, in many cases, the company refers the owner to the condition, and succeeds in settling for £2 a claim for the loss of a dog worth £10, where, if legal action were taken, the full value of the animal would be recovered for.

We repeat that all conditions limiting the liability of the company as regards value are (on the present state of the legal authorities) of no effect unless signed by or on behalf of the consignor.

A condition that a dog is sent at owner's risk is perfectly valid and binding if signed, provided a reasonable reduction in the rate is made as a consideration for the company escaping from liability.

So far we have dealt with dogs which are unaccompanied by their owners. When the owner travels with his dog he takes an ordinary dog ticket, and, as a rule, does not sign any condition, though the ticket will refer to the conditions published in the company's tables. The question may yet be taken by some company to the House of Lords whether such ticket requires to be signed; but until the case has gone to the highest court of all we must assume that the conditions in an unsigned

ticket limiting the extent of the company's liability are no more binding when the owner accompanies his dog than when the latter is sent by itself, and that therefore the company is liable to the full extent of the damage the owner suffers by loss of or injury to his dog, if such loss or injury is caused by the negligence of the company's servants. Inasmuch, however, as when the dog is with its owner, the latter is bound to look after it and keep it out of the way of danger, there is much less chance of the company incurring liability through the negligence of its servants than when the dog is sent as a parcel, so to speak, and this is probably why companies do not require passengers to sign for a dog ticket. This also may account for the fact that the usual regulation that no dogs are allowed in passenger compartments is more honoured in the breach than in the observance. The passenger remains responsible for the dog whilst he has it in the carriage, but the company takes the responsibility if the dog is in the guard's van.



CHAPTER IX

ROOKS

TO what extent has a man a property in rooks which congregate on his land?

How far is a man's rookery entitled to the protection of the law?

Has he any right of action against another who maliciously disturbs the rooks, and what, if anything, is his remedy against anyone killing rooks on his land?

These questions, and propositions arising out of them at the present day, deserve more consideration than they have received at the hands of most writers on game. We had taken somewhat of an interest in the subject, and when our client, Mr. Cunningman, came to us and propounded a few questions bearing on these points, we were quite prepared to go into the question fully with him. It is not often, perhaps, that old legal cases furnish

much amusement for the layman, but the single and somewhat ancient authority on the subject of rooks, to which we shall presently refer, seemed to contain a great many sparks of humour, even to the non-legal mind, and when we read various lengthy extracts from it to our client he laughed considerably at the quaint legal verbiage, and remarked that he did not know we had anything so interesting in our musty old law books, and said that some of it was as good as a first-class fishing story.

Well, Mr. Cunningman called one spring morning, bringing with him the lease of his farm. We might mention, by the way, that Mr. Cunningman is an intelligent and thoughtful man. If he comes for advice on any question, the answer to which may by any possibility be affected by the construction of some document in his possession, he invariably brings that document with him. A good many men—we were almost going to say three clients out of four—would leave it at home, and say they didn't know it would be wanted; they knew quite well what was in it, and so on. Not so Mr. Cunningman. Thinking that what he was going to ask might in some measure turn on his lease, he brought it with him, though in this he perhaps showed unnecessary caution under the circumstances.

Our client opened his case by saying what we already knew—that there had been a little friction between him and his landlord as to the alleged interference by the former with the game, which, as usual, was reserved to the landlord, and he wanted to know what were his rights with regard to certain things that were not game, as he meant to exercise his rights to their fullest extent in

retaliation, as it were, for what he considered his landlord's unjust treatment.

After dealing with one or two other subjects, he said:

"Now, I want to know whether I can kill his rooks? You know, sir, I daresay, that Mr. Skinflint" (the landlord) "has a rookery in a wood in his own occupation that joins the bottom end of my farm, and very proud he is of it, too. He says there isn't another rookery like it in the country, and I daresay he's right. These rooks, of course, come on to my farm. I've never shot any of them yet, though, of course, I keep a boy to frighten them off the corn; but I think, seeing how my landlord is behaving, I shan't be so polite in future."

Politeness is a virtue with which Mr. Cunningman was certainly not blessed to any great extent, and we must confess we felt a considerable amount of surprise that his references to his landlord were as polite as they were, his usual mode of indicating that gentleman being "Old Skinflint" or "my old devil of a landlord"; occasionally even he would make use of some stronger expression. However, we made no comment on this point, but interrupted him with the remark:

"Oh, as to that, you needn't have any doubt. Mr. Skinflint can have no right to the rooks when they get on your farm, and, of course, your lease doesn't reserve them to him, so you can shoot them when they are on your corn to your heart's content."

"Yes," replied Mr. Cunningman, "I hadn't much doubt about that, but—" (and here his face assumed an innocent-looking smile) "you must remember that one of my fields, a grass field, is next the rookery. Now, if

anyone stood in that field, under the hedge, alongside the wood, he might perhaps kill more rooks than was necessary to protect my corn."

We thought we gathered the drift of his meaning.

"What you really want to know," we said, "is, put shortly, whether anyone—we won't say you, but *anyone*—standing in your field and shooting Mr. Skinflint's rooks as they came out would be liable to an action?"

Mr. Cunningman nodded assent.

"There's an old case on that very point I was reading only the other day," we replied, and, stepping to the bookshelves, we took down the second volume of Barnewell and Cresswell's Reports. We turned to the index, and found the case we were in search of — Hannam against Mockett, p. 934. "Here we have a very interesting case; I'll read you some of it. I think it'll amuse you. First, however, in case I should forget to mention it afterwards, if there is a right to shoot the rooks over your farm, there is no right to shoot over Mr. Skinflint's land. That itself is a common law trespass—at least it's so considered by the best authorities, and, if frequently repeated, Mr. Skinflint might get an injunction against it, and damages. If the rooks are killed at all, the shooting must be over your land."

"Ah, that's worth knowing. I'll take care to remember it," replied our client.

"And now for this old case. It was tried in the year 1824, and the declaration (which means the plaintiff's statement of claim) averred—I am quoting in the words of the report—'that the plaintiff was lawfully possessed of a certain close of land, with certain trees growing thereon, to which said close and trees divers great

numbers of rooks had been and were used and accustomed to resort and come, and to settle, build nests, breed and rear their young in and about the said trees, by means whereof the plaintiff had been and was used and accustomed to kill and take great quantities of the said rooks and the young thereof, and thereby divers great profits and advantages had accrued, and still ought to accrue, to him, to wit,' etc., etc."

"They pile it on pretty thick," interjected our client.

"Oh, that's nothing," we replied; "wait till you hear how many rooks the defendant frightened away. It goes on: 'Yet that the defendant, well knowing, etc. etc., but contriving, and wrongfully and maliciously intending to injure the plaintiff, and to alarm, affright, and drive away the said rooks, and to cause them to forsake and abandon the said trees of the plaintiff and their nests built therein, and to prevent other rooks from resorting thereto and settling in and upon the said trees, and to deprive the plaintiff of the profits and advantages so arising from the said rooks and the young thereof, as aforesaid, did theretofore, to wit, on, etc., etc., and on divers other days and times wrongfully and unjustly cause divers guns loaded with gunpowder to be discharged near to the said close of the plaintiff, and with the noise of the discharge of the said guns and the smell of the said gunpowder, did disturb, terrify, and drive away divers rooks then being in or near the said close and trees of the plaintiff, insomuch that divers, to wit, 1,000 rooks, which before that time had been used and accustomed to resort and come to the said trees, and to settle, build nests, breed and rear young in and upon the said trees, flew away and abandoned the said

close and trees and the nests built therein, and wholly forsook the same; and divers, to wit, 1,000 other rooks, which were then about to resort to and settle in and upon the said close and trees, were thereby prevented from so doing; whereby the plaintiff hath been from thence hitherto, and still is prevented, from killing and taking rooks and the young thereof in such plenty as he otherwise might, would, and have done, and thereby the plaintiff hath lost and been deprived of the profits and advantages which might and otherwise would have accrued to him therefrom, to wit,' etc., etc.

"Rather a formidable indictment, eh, Mr. Cunningman?"

"That's what I was thinking," replied our client, with a smile. "Why, if I were to tell Mr. Skinflint that I'd been reading about a rookery where there were, or ought to have been, over 2,000 birds, he'd go mad with envy, he's so set up with his own rookery. I might tell him, too, that I was sure it was quite true, for I got it from a law book," and our client laughed at his little joke.

"Well, you see, Mr. Cunningman" we said, "lawyers have, or rather used to have, their little extravagancies like other people; but we've improved of recent years. However, that's not all the statement of claim. There's a lot more, but I won't bother you by reading it, for it merely puts the same allegation in another way. The next part of the declaration charges the defendant with doing exactly the same thing, but from a different intent, viz., to deprive the plaintiff of the satisfaction and delight of having a rookery close to his house."

"Well, and what was the result of this curious old case?" queried our client, rather eagerly.

"The result, stated shortly, was that the Court held the plaintiff had no cause of action."

"That's all I want—that's all I want!" almost shouted Mr. Cunningman. "I'm very much obliged to you. Now I shall know how to treat Mr. Skinflint."

"Stop a moment, my friend," we replied; "you had better hear the reasons for the judgment before you act on it."

"Well, perhaps I had," replied our client, settling down again.

"In the first place," we began, "the Court might have said, with regard to one portion of the plaintiff's claim—viz., that in which he claims for those thousand rooks that had been prevented from coming to the rookery—that being wild birds, the plaintiff could have no possible right of any kind to them whilst they were over another's land, and until they had become regular inmates of the rookery. But the judge who delivered judgment didn't proceed on those lines exactly, but dealt with the question as a whole—What special right, if any, has a man to rooks in a rookery? Let us see what he says. He first says—the judgment is a very long one, so we won't read it at all—'that the claim to the rooks is not made *propter impotentiam*, as it is called, *i.e.*,, because they are young, and confined to their nests in the plaintiff's trees.' (If they were, there might be a difference.) He then goes on; 'But has he (the plaintiff) a legal right to insist that the birds shall be allowed to resort to his trees? Allow the right as to these birds, and how can it be denied as to all others? In

considering a claim of this kind, the nature and properties of the birds are not immaterial. The law makes a distinction between animals fitted for food and those which are not; between those which have received protection by common law or by statute, and those which have not. It is not alleged in this declaration that these rooks were fit for food; and we know, as a fact, that they are not generally so used.'"

"I fancy times have changed as well as lawyers' pleadings, Mr. Six-and-Eight," said our client, interrupting us in reading. "There's about a score of people in my parish send rook pies to the bakehouse after Mr. Skinflint has had his rook-shooting."

"Yes; I suppose so," we add. "Probably the judge in this case had never tasted rook pie—perhaps they weren't known in those days. Unfortunately, I've no historical cookery book to refer to, and my legal researches hardly furnish me with an answer, so we'd better take it that rooks weren't generally eaten at that time.

"The judge then goes on to say: 'So far from being protected by law, they have been looked upon by the legislature as destructive in their nature, and as nuisances to the neighbourhood where they are. That being so, surely a person can have no right to have them resort to his lands to the injury of his neighbours, and consequently no action can be maintainable against a person who prevents their doing so.' Then after referring to the law as to rabbits and pigeons, with which I don't think we need trouble ourselves, his lordship turns his attention to the statute law relating to rooks and similar birds. The first statute he referred to was the

24 Hen. VIII, chap. 10, which was entitled, 'An Act to destroy choughs, crows, or rooks,' which, I think, Mr. Cunningman, will interest a farmer as much as a lawyer. In its preamble it recites 'That these birds destroy great quantities of corn as well at the sowing as at the ripening and kernelling thereof, that they make a marvellous destruction of the covertures of thatched houses, barns, ricks, stacks, and such like, so that if they be suffered to breed, as in certain years past, they will be the cause of great destruction of corn and grain, to the great prejudice of the tillers and sowers of the earth.' It then enacts that 'Every person having lands in his own occupation shall do as much as in him lies to kill and utterly destroy all choughs, crows, and rooks coming on to their land, on pain of grievous amercement for default in so doing.' Other sections, which were only temporary, enact 'That the inhabitants of every parish shall, for ten years, provide and set nets for the birds, on pain of forfeiting 10s. a day for every day on which nets are not set, and that for the like period in every year the inhabitants of every parish shall meet and decide what are the best means to destroy the young birds on pain of forfeiting 20s. for every year on which they neglect to meet.' Then by section 5—which, I think will interest you most, Mr. Cunningman—'Any person minding to destroy the said choughs, crows, and rooks may, after request to the owner or occupier where they haunt or breed, enter and carry away all such rooks, etc., as he shall take the same day, without let by the owner or occupier."

Whilst we were reading the above lengthy extracts, we found time to occasionally glance at our client, whose

face gradually assumed a look of interest and surprise, and when we at length laid down our book, he appeared to be struggling with his astonishment to find a suitable remark to express his opinion on what had been read. At last he found tongue in a somewhat trite expression: "Well, I'm damned!" Looking at him for a few moments over our spectacles, we inquired the cause of his exclamation.

"Well," he said, "I was thinking I'd learnt a deal I didn't know before. To think a British Parliament could ever have been such a pack of darned fools as to pass an Act like that! It ought to be framed and hung up as a curiosity in the British Museum, and all the other museums in the country, too.

"You forget, Mr. Cunningman," we replied, "that that Act was passed getting on for four hundred years ago, and for aught we know to the contrary, it may have been a very necessary and useful piece of legislation. The farmers of that day may have had as good reason for wanting to exterminate—or at least reduce—the number of these birds as some of our Colonial cousins have for wishing to exterminate rabbits."

"Well, but you don't mean to say, Mr. Six-and-Eight, that that old Act is still in force, eh? Because, if so, I'll just go to my landlord's rookery and pot the birds off."

"No," we replied, "you are quite right: it is not in force now. A statute of Elizabeth" (we referred to our books as we spoke) "repealed part of it, but expressly revived the provisions as to keeping nets for choughs, crows, and rooks, and also provided for rewards being given for destruction of vermin; for instance, for the heads of three old crows or rooks, or for six young ones,

or for six eggs, the reward was a penny, a sum which, if our memory serves us, was about equal to a day-labourer's wage. This statute of Elizabeth was only temporary, and of recent years both of these old Acts have been wiped off the statute books as having become obsolete."

"But I suppose the man who frightened the two thousand rooks won his case, didn't he?" inquired our client.

"Right again, Mr. Cunningman, he did. But just a few more extracts from the judgment, and we shall be able to follow the learned judge's reasoning better. After quoting these old Acts which, bear in mind, although still on the statute books, were obsolete even at that time, he goes on: 'It is not alleged in this declaration that rooks are an article of food. At all events, they are not so much so as rabbits'—perhaps the judge had heard of rook pie, after all. 'They certainly,' he says, 'answer to the description of animals *ferœ naturœ*. They are not protected by any statute, but, on the contrary, have been declared by the legislature to be a nuisance to the neighbourhood where they are. That being so, it is quite clear that no person can claim to have them resort to his lands, nor can any person become a wrongdoer by preventing their doing so. "Keeble v. Hickergill" (1809) bears a stronger resemblance to the present than any other case, but it is distinguishable. There it was decided that an action on the case lies for discharging guns near the decoy pond of another, with design to damnify the owner by frightening away the wildfowl resorting thereto. But, in the first place, it is observable that wildfowl are protected by the statute

25 Hen. VIII, c. 11: that they constitute a known article of food, and that a person keeping up a decoy expends money and employs skill in taking that which is of use to the public. It is a profitable mode of employing land, and was considered by Lord Holt as a description of trade. That case, therefore, stands on a different foundation from this. Upon the ground, therefore, that the plaintiff had no property in these rooks, that they are birds, *ferœ naturœ*, destructive in their habits, and not protected either by common law or statute, and that the plaintiff is at no expense in regard to them, we are of opinion that the plaintiff had no right to insist upon having them in his neighbourhood, and that he cannot maintain his action.' That, Mr. Cunningman, finishes the case."



CHAPTER X

TRESPASS AT COMMON LAW



ON the subject of what is a trespass at common law (apart, that is from the pursuit of game), there seem to be many popular fallacies. It is thought by many that so long as a man does no appreciable damage, he may roam about another's land at his own sweet will. This, of course, is not so, and the least entry into another man's property is a trespass. Throwing a stone into his field is as much a trespass as throwing it through a window of his house. In like manner, it is a common law trespass to shoot on to another man's land, or to send a dog on to it. In all such cases the law presumes a nominal damage if no appreciable injury has been done, and for such damage an action lies against the trespasser.

But actions at law are expensive, and hence are seldom brought against the ordinary trespasser, who is almost invariably a "man of straw." Recourse, therefore, has to be had to the magistrates, and their jurisdiction only arises where actual damage has been done to the land, or to something growing or affixed to it, as grass, or crops, or fences. Very slight damage will suffice—a few branches broken in the hedge, the grass appreciably injured, or the like; but damage there must be. Hence the popular fallacy above referred to.

The prosecution before the magistrates is not for trespass in itself, but for malicious damage to real or personal property, under the Malicious Damage Act, 1861. If, therefore, a man merely walks across your park or along a glade in one of your coverts, or across your wheat stubbles, you cannot as a rule prosecute him before the magistrates (see Eley v. Lytle, 1886), and your only legal remedy is an action at law, which, as we have before hinted, is useless in ninety-nine cases of trespass out of a hundred, on the ground of expense. Where, however, a man walked across a meadow with grass in places knee deep, and refused to turn back when ordered, and the magistrates found that he had done sixpenny-worth of damage, the Court of King's Bench held that he had been rightly convicted under the Act (Gayford v. Chouler, 1898).

Further than this, the Malicious Damage Act does not extend to products of the soil which are entirely uncultivated, but come up spontaneously, and consequently you cannot prosecute before the magistrates the children you find picking violets or primroses which grow wild in your woods; nor the

man who scours your fields for uncultivated mushrooms, unless in either case you prove broken hedges, or trees, damage to the grass, or the like (Gardner v. Mansbridge, 1887).

How to prevent trespassing where no damage is proved is a somewhat difficult question. The exasperating wooden notice-board is no preventive, or at most is merely an intimidation to the chicken-hearted, and there seems to be no sufficient remedy to deter any so minded impudent loafer from wandering at will through your coverts and disturbing the game. If you find a man walking down your glades doing no damage to the trees or fences, your only course is to show him the quickest path to the King's highway, and see that he takes it. Should he object to go, use as much force as is necessary, and if he shows fight, and you are strong enough to do so, knock him down, tie his hands and legs, and have him carried off. Possibly, when you have loosed him on the road, he may retire at a safe distance and throw stones at you, but such obstreperous gentlemen are not often met with.

If a man repeatedly trespasses after several warnings (which, by the way, had better be in writing), you can, if you like, bring an action and obtain an injunction against future trespassing, which, if he disobeyed, will insure the delinquent's committal to Holloway Prison for contempt of Court, or you can as an alternative proceed in the County Court. Even this latter, however, owing to the expense, is a remedy which would ordinarily be used only against a person of some means who could pay the costs—where, for instance, a neighbouring owner claimed a right-of-way which did not exist through your field or

wood, or the right to come on your land to double the intervening hedge when shooting his boundaries. In cases like these, an action for an injunction (which should not be brought until the trespass has been repeated several times, or at least after notice to desist) would be the appropriate remedy.

To deal, however, with the ordinary trespasser, who is generally a member of the out-at-elbow fraternity, is another matter. If he persists in continual trespassing, beyond turning him off there is no course open to you save to set a watch on his movements and ascertain whether he does any damage which will render him liable to prosecution. If he is very careful you must catch him by a trick. One way to do this is to manipulate a stile by which he is wont to enter your land so as to insure its breaking when his weight is on it. Other modes may suggest themselves to the reader. Anyhow, having caught him tripping, you are in a position to go before the local bench of magistrates and ask that a substantial penalty my be inflicted.

The common law allowed a man to do just what he liked to protect himself from intrusion; a man might set any trap to catch a trespasser, as he might to catch a thief. He might (and may still) saw through the wooden bridge that crossed the little river flowing through his estate, and thus cause the trespasser to take an involuntary cold bath, without incurring any liability for so doing. Or he might, if he liked (and may still), dig a pit for his enemy (the trespasser) to fall into.

With regard, however, to spring-guns and man-traps, and such-like engines of war, a different law now prevails. Anent man-traps, a curious and interesting

case came under our notice some years ago, and is, we think, well worth recording, and as at the time we discussed with our clients the law on this subject, we cannot do better than record the interviews at which we heard the story of what we have sometimes referred to as

THE MYSTERY OF DEEPDALE MANOR.

AN INTERVIEW.

A few days before Christmas, not so very many years ago, we were interrupted in our work by the appearance of Mr. Robert Pickemup, who, we regret to say, was notorious more on account of his estimated success as a poacher than from any outward efforts to gain an honest livelihood. Mr. Pickemup was not a client who sought our assistance much, but when he did it was generally a case upon which he was quite prepared to pay heavy fees, *and in advance.* As he once knowingly remarked, "It was always best for good results to grease the wheels well before starting." We, therefore, fully expected to hear from him a long tale of woe, and that the police were once more endeavouring to separate him for a time from his domestic joys, which at best were (in our opinion) somewhat of a doubtful character. However, we were doomed to disappointment. Mr. Pickemup advanced in a bold, unhesitating manner, and he greeted us with such a cheery "Good morning, sir!"—quite the reverse of his usual method of salutation—that we were puzzled at the outset.

"Well, Mr. Pickemup," we commenced by way of a feeler "what is it now?"

"Nothing very serious, sir, and I shan't trouble you

long. I want your advice, and, if necessary, I may want your services afterwards, although I don't think this job will be a very heavy or expensive one."

"Fire away, then," we chime in; "give us the whole story of your troubles, and we will see whether we can clear them away for you."

"You know, sir," said Mr. Pickemup, "that old Squire Broadacres and me ain't on very good terms, and as he's lagged me a time or two, I should very much like to get a bit even with him if I could. Well, sir, you'll hardly believe me when you've heard what I've got to say; but if you don't, you can go down to Deepdale and see for yourself. It's downright disgraceful, I say, and that's the long and short of it. The law ought not to allow it, I say; and if it does, well, then I'm a Dutchman."

"But what is it?" we ask; "you can't possibly expect me to tell you whether the law sanctions a thing or not until you have told me what you complain of."

"I'm a-coming to that, sir—all in good time, if you'll have patience. You are perhaps aware that Squire Broadacres has spring-guns and man-traps set all over his woods. Well, now, blow me if he hasn't gone and caught a poor cove and—*took his leg clean off.*"

We were forced to admit that our client with the dubious reputation had prophesied aright, and we could not believe his statement.

"But what proof have you that he sets man-traps and spring-guns?" we asked. "Have you seen them yourself? And, really, Mr. Pickemup, without wishing to offend you, we must say that if half what we hear is correct, you are certainly in a position to answer the



"Taken his leg off, togs and all."—p. 139.

latter part of our question better than anyone who is not employed in Mr. Broadacre's preserves."

"No, sir, I can't say as how I've seen 'em set myself—leastways, not the man-traps—but, sir, in every wood which is next the roadway, or next a footpath, there's great black notice-boards, with white letters a foot long, saying as how they are set, and that trespassers go there at their peril, and will be prosecuted with the utmost rigour of the law—whatever that may mean."

"Ha! ha! Mr. Pickemup," we replied laughingly, "because there is a notice board saying that they are set, it does not necessarily follow that they *really are set* there after all. Why, your story seems to corroborate what a great lawyer once said when speaking of notice-boards. He called them 'wooden falsehoods.'"

"It's all very well for you to laugh, sir, but you go over to Deepdale and see for yourself whether what I tell you is gospel truth or not. I tell you that old villain, Sharpsite, the head keeper there, has caught a poor devil in one of his torture machines and taken his leg off, togs and all. It's awful, sir."

We simply smile and shake our head knowingly, but the indignant Mr. Pickemup is not convinced.

"I want to have the law of him, sir!" he exclaims excitedly; "that's what I want, and if it costs £50 I'll have it. I can get the money easily enough. I know well enough where to go for that, but I come here first to know what I can do, and how I ought to work."

"Calm yourself, Mr. Pickemup; you really must calm yourself," we reply, as our client wipes the perspiration from his heated brow; "and let us get to facts—facts,

you understand, that are within your own knowledge. That's what a lawyer always wants."

"It's there, I tell you, sir, it's there; and I've seen it with my own eyes—the trap and the leg in it," replies our client somewhat incoherently.

"You say that there is a human leg now to be seen in a man-trap at Deepdale. Is that all you have got to say about it?" we ask.

"Well, I should think that's enough, too, in all conscience' sake, isn't it?" says our wrathful client.

"Whose leg is it?"

"That's what we all want to know, and none of us can find out."

"Ah, I thought so. But whom do you mean when you say 'we'?"

"Well, sir, that's myself and a few friends who are interesting themselves. The whole village is up in arms, sir. They talked about burning the squire's effigy like a Guy Fawkes last night when I was down at the 'Dog and Gun,' and quite the proper thing to do, too, I said."

"Not so fast, my friend; let us hear a little more of the facts. Where is this leg and man-trap to be seen?"

"Just inside the park palings, against the entrance lodge to the south gates, a-hanging on to a notice-board about trespassers and man-traps. It's a nasty, rusty old trap, sir, with great big teeth in it, fit to chop a donkey's leg off, let alone a man's; and what's a-adding insult to injury is, they've gone and stuck up a written notice, saying as how they'll be obliged if the owner of the leg and boot and gaiter and stocking and bit o' trousers will kindly call upon old Sharpsite, or at the lodge, and take 'em away!"

"So everyone who passes can see them, eh, Mr. Pickemup?"

"Yes, sir. As you know, that's on the main road, and no one can very well pass without a-seeing 'em; besides, there's quite a crowd o' kids there all day long a-looking at 'em."

"Ah!" we murmur meditatively; "if my memory mistakes not, there is an old case on the point," and touching a hand-bell, Mr. Legalling (our articled clerk) appears.

As he enters our sanctum he nods familiarly to our client, and a few moments later he is searching the bookshelves for the volume required.

"'Barnewell and Adolphus'—that's it, isn't it?" says Mr. Legalling; "but I can't find 'Ilott v. Wilkes' anywhere in it."

"Well, then, try 'Barnewell and Alderton.' The reports are easily mistaken," and we turn to discuss the weather in order to while away the temporary interval with our client.

"Here it is, sir, in the year 1820; but it's a case on spring-guns."

"Thank you, Mr. Legalling; that will do. Please now to hunt up the special Act on the subject of spring-guns and man-traps, and bring it in."

"You must know, Mr. Pickemup, that there's a special Act dealing with man-traps and spring-guns, but it may be as well for you to understand the law as it was before the Act," and opening the reports, we read the head-notes of the case: 'A trespasser having knowledge that there are spring-guns in the wood, although he may be ignorant of the particular spots where they are placed,

cannot maintain an action for an injury received in consequence of his accidentally treading on the hidden wire communicating with the gun, and thereby letting it off.' That's the gist of the case. Let's see what the facts of it were."

After glancing through it, we continued:

"It was a case where a man owned a wood of 50 to 60 acres, and by his order nine or ten spring-guns were set there, whilst several notice-boards were posted about at different points, stating that such instruments were set. The plaintiff seems to have been nut-gathering, and it is stated that he knew of the existence of these spring-guns, or, at least, that he had seen the notices, but persisted in trespassing, in spite of them, and got shot in the leg for his pains, and the jury awarded him £50 damages. The defendant, however—the owner of the wood—took the case before the Court of King's Bench, and four judges set aside the jury's verdict, stating the law to be, that if a man entered a wood with the knowledge that spring-guns were set there, he did so at his peril, and if he was injured he must take the consequences.

"So you see, Mr. Pickemup, in the year 1820 anyone could set spring-guns (and the same argument would apply to man-traps) in his woods, provided he duly advertised the fact by means of notice-boards or otherwise. One of the judges went so far as to suggest that perhaps notice-boards were not necessary; and he voluntarily added some interesting opinions respecting game. I will read you one of them, as it gives an idea of their views in those days, some seventy years ago, you see: 'A man has a right to keep persons off his lands in order to preserve the game. Much money is expended

in the protection of game, and it would be hard if, in one night, when the keepers are absent, a gang of poachers might destroy what has been kept at so much cost. If you do not allow men of landed estates to preserve their game, you will not prevail on them to reside in the country. Their poor neighbours will thus lose their protection and kind offices, and the Government the support that it deserves from an independent enlightenment and unpaid magistracy.'"

"No doubt," said Mr. Pickemup, who had been following our reading carefully, but a scrutiny of his physiognomy failed to give us any clue to the hidden meaning of his remark; so we added, "and the defendant waived all claim to costs."

"Very generous indeed, but I expect if the truth were known he was quite certain that the other man wasn't good for 'em," replied Mr. Pickemup. And we were compelled to smile appreciatively upon our client.

Here Mr. Legalling, who had quietly entered the room a couple of minutes previously, placed "Chitty Statutes" upon our table, opening it at the very page required.

Mr. Pickemup, on seeing the exterior of this bulky volume, collapsed again into what he vulgarly denominated "the sweating chair," but gazing pityingly over our spectacles at his prostrate form, we proceeded to read to him the present state of the law on the subject which was then engaging his special attention.

"Since that case was decided, Mr. Pickemup, a statute, passed in the year 1861 has almost entirely reversed it. It enacts that 'whosoever shall set or place, or cause any spring-gun, man-trap, or other engine calculated to destroy human life or

inflict grievous bodily harm upon a trespasser or other person, shall be guilty of a misdemeanour,' and the penalty is penal servitude for anything up to three years, or imprisonment for two years, with or without hard labour, 'and whosoever shall knowingly permit such gun or man-trap, which may have been set by someone else, to continue so set, shall be deemed to have set such gun or man-trap, with such intent as aforesaid. But there is a provision to the effect that these enactments do not apply to traps usually set for vermin, or to spring-guns, man-traps, or other engines set between sunset to sunrise in a dwelling-house for the protection thereof.'"

As our reading progressed, so did our client's interest increase, and when we looked up at its conclusion, he exclaimed with great gusto:

"Then I've got him; by Jove, I have! That's capital!"

"Stop a bit, my friend, you must not jump at conclusions like that. What proof have you that Mr. Broadacres has set man-traps on his land?"

"Surely you don't want better proof or more convincing evidence than what I've told you?" says Mr. Pickemup, opening his eyes wide with astonishment.

"Well," we reply, "I'm rather afraid I do. "In the first place, suppose Mr. Broadacres or his keeper really did catch a man in his trap, how do you know the trap wasn't set in the house and caught a burglar—a gentleman from London, perhaps, who was very glad to get away with the loss of his leg instead of fourteen years' penal servitude? If that was so, then the old case we have read comes in, and declares that Mr. Broadacres has acted quite legally."

"Don't you believe it, sir," replies our client; "that trap was set on the land if it was set anywhere."

"Ah, now," we rejoined, "you are beginning to see the possibility of what I concluded at once was the fact. You can hold the pipe in your mouth without smoking, and, although your boot is on your foot, you see you're not walking, and so it is with Mr. Broadacres. He has stated on his notice-boards that man-traps are set, but it doesn't follow as a matter of course that they *are* set; and if you wish for my opinion, it is that this is simply a ruse on the part of your dear friend (?), Mr. Sharpsite, to frighten people away from his preserves."

"You do, do you?" said our client; "well, I never looked at it in that light, and I'm not sure you ain't right after all. It's worth while considering, and I'll mention the matter to those friends of mine I referred to; but can't I get at old Squire Broadacres nohow for indecency in exposing human remains?"

"No, I'm afraid not. There is no particular Act of Parliament that we know of which provides for your case. If it was a whole body, the case might be different, but in this case there is only part of a leg, and that's covered up decently with part of the trousers, you say. I am afraid you must content yourself with chaffing Mr. Sharpsite, or retaliating on him by a practical joke equal to his own. No, no, Mr. Pickemup, you must not ask us to suggest the ways and means. Our duty is to advise, and to advise only; not to find dodges for our clients to elude the laws, unless, perhaps, it is purely a case for moral and strictly legitimate ends."

"No doubt," again remarks Mr. Pickemup, and he

grins at us in an objectionable and familiar manner, which we do not think fit to encourage; so we rise to intimate that we consider the interview closed.

"Well, good day, sir. I'm sorry I can't do anything. I should wonderfully have liked to have got the old beggar on toast, but apparently there's no help for it, and I don't suppose you'll forget to send me in my little bill of charges."

Chuckling at this sally of wit, he left us to our studies, whilst he pursued his way through the outer offices, where, if the truth must be told, he gave a mystic signal to our Court clerk. That employee immediately reached for his hat, and running his hand across his mouth, remarked to the other clerks he had an important business engagement to keep, which would necessitate an absence from the office of fifteen minutes, and together they disappeared from view.

. . . . . .

"Ha, ha!—very good—ha, ha, ha! So, so, Mr. Six-and-Eight, they wanted to prosecute me, did they? That's splendid! I had no idea I frightened them so much. Who did you say consulted you in the matter?"

But Mr. Six-and-Eight was far too wily an old lawyer to be drawn, or to give away any of his clients, however humble their walk in life might be, or however well he might have dined. He very sagely avoided the question by asking another.

"But really, my dear Mr. Broadacres, where did you get the leg from? What put the idea into your head, and were you not afraid of having some serious injury done

to you or to your property by a vindictive or malicious neighbour?"

"How so, Mr. Six-and-Eight? Surely if I find a part of a man's personal belongings in my woods, it's my duty to do the best I can to return them to their rightful owner."

"Yes, you are right, and yet you are wrong," we reply, thinking that the best answer to a very complex question; "but really now, joking apart, you don't wish me to believe that you found the leg as you suggest? A good many years have slipped by since this affair created such a stir in the neighbourhood, and my curiosity has been smouldering a long time, but talking of the incident to-night has aroused it again. I should very much like to have it gratified at last, my dear Mr. Broadacres," we added persuasively. "There is no earthly reason that I can see why you should not let me into the secret."

After a silence of some length, during which Mr. Broadacres audibly chuckled to himself and sipped his port, he rose from his chair to relight a fresh cigar, and tucking up his coat tails, stood upon the hearth-rug with his back to the fire, and thus unburdened himself:

"It is unnecessary for me to mention to you, Mr. Six-and-Eight, the details of this apparent mystery, as far as the public were aware. With these you are already acquainted, and I will therefore confine myself to what you do not know, and are never likely to find out unless I tell you. In doing so I trust you will consider my statement as more or less confidential—that is to say, you will not betray me to anyone without my permission first had and obtained—as you lawyers are in the habit of saying."

Here we bow gravely to intimate our acquiescence.

"Very well, then. At that time I had staying with me my nephew, young Jack Funnybone, a medical student from Bart.'s. He was here for the Christmas holidays, and I had been telling him of the constant annoyance I suffered from village loafers and such-like scum of the earth, who were always prowling round my coverts to pick up whatever they could. I told him I had notices, posted everywhere, stating that spring-guns, dog-spears and man-traps were set in every wood, and trespassers must beware, but such warnings had no effect whatever; when suddenly young Funnybone slapped his knee and exclaimed, 'I've got it! I know how to stall them off, or in any event to probably funk the timid ones.' That's how he expressed it. Naturally I inquired how. 'Easiest thing in the world,' said he; 'when I go back to town I'll buy you a leg—a man's leg, I mean—and all you've got to do is to get a heavy old hob-nailed boot, a rough worsted stocking, and a bit of corduroy trousers, and there you are, don't you see?' But I did not see, nor catch the drift of his reasoning until he went on to explain: 'You mustn't say a word to a living soul, unless it is to Mr. Sharpsite. Perhaps it will be best to take him into your confidence, as it will be more convenient, and he will be able to work the details better than you can. Next get a man-trap; the larger it is and the more formidable it looks, the better. Have this taken to the home preserve by a watcher by Sharpsite's orders. He (Sharpsite) will then hide it somewhere, for, say, a week or so; as when the matter gets talked about afterwards, the watcher is sure to blurt out how he took the trap to Deepdale, and that will give a colour of truth to the

whole concern. Then when you get the leg from me, dress it up in the stocking, boot, and bit of trousers, smear plenty of blood (which you can get anywhere) and earth over the trap, and hang up the two together from a notice-board near to the lodge gate, and it might be as well to add a written notice, somewhat after this style of thing: "If the owner of this relic will call and take it away at his convenience, Mr. Broadacres will be much obliged, and no questions will be asked."'" Here the squire stopped in his narrative to chuckle again. Continuing, he said: "It struck me as rather a brilliant suggestion, and I could not resist acting upon it."

Rather gruesome, wasn't it?" we interpose.

"Well, yes, it was that," our host replied; but if you could only realise what a confounded nuisance those scoundrels were to me you would sympathise a bit more, and understand why I clutched at any straw to try and save myself from them. I knew at the time the indignation it caused, and I heard from several sources how the village orators waxed warm and eloquent over their pewter measures against the barbarous and unjust game laws; how everyone was dying to ascertain the name of the unfortunate victim; whether he escaped alive or had been secretly made away with by that deep-dyed villian, Sharpsite, as well as a thousand and one other questions. But I didn't know that anyone had consulted you in the matter, Mr. Six-and-Eight. The higher public opinion ran, and the more folks' curiosity grew, the more I chuckled up my sleeve, and I've had many a hearty laugh over it since, I can tell you. So has Sharpsite—you ask him. It was a rum experiment, but it answered admirably for some time, whether it was or was not contrary

to the policy of law and morals, and I have never since regretted the part I played in 'The Mystery of Deepdale Manor.'"

This concluded the squire's narrative, and reserving our opinions, which were not called for, we rose to take our leave. It was a fine starlight night when we drove home, and the hoofs of our nag rang merrily out from the frostbound road. As we pulled away at a long cigar of fragrant aroma, we cogitated upon what we had heard, and could not help once more coming to the conclusion that, in all cases, "Prevention is better than cure."

CHAPTER XI

TRESPASS IN PURSUIT OF GAME



THE offence of game poaching is dealt with chiefly by four statutes—the Night Poachers' Act, 1828; the Game Act, 1831; the Night Poaching Act, 1844; and the Poaching Prevention Act, 1862, which will each in due course receive our consideration.

In ascertaining what is a trespass in pursuit of game, we must have recourse to the words of the statute itself. The Act of 1831, which deals with the offence of day poaching, or, as it is technically called, trespass in pursuit of game in the daytime, uses the following words in describing the offence. "If any person whatsoever shall commit any trespass by entering or being in the daytime upon any land in search or pursuit of game, or woodcocks snipe, quails, landrails or conies"—penalty on summary conviction not exceeding £2 and costs; or if five or more persons commit the offence together not exceeding £5 and costs each (sec. 30.) A similar trespass upon His Majesty's parks, chases or warrens entails a penalty of not exceeding £2 and costs (sec. 33). "Daytime" begins at exactly one hour before sunrise and ends at exactly one hour after sunset (sec. 34).

It will be seen that the governing words are "enter or be." To commit a trespass within the meaning of this Act a person must "enter" or "be" in or upon the land. In this respect the trespass dealt with by the Game Laws is slightly different, slightly less extensive, than trespass at common law.

At common law, as we have seen, it is trespassing to wilfully throw a stone on to another's land, or fire a shot on to it. Under these Acts, a *personal entry* is required. Some part of the body must be on or over land on which the person in question has no right to be, or has only a right to be there under other and different circumstances. Any part of the body will do—stretching out an arm over the land is sufficient.

Personal entry being, as we have said, essential, it is not a trespass in pursuit of game if a man stands on land

on which he has a right to be, and simply fires at game over other land on which he has no right. It may be a common law trespass, and the shooter may be liable to an action at law, but it is not an offence punishable under the Act. So also it is no offence to send a dog on to land to range, with a view of driving the game over the boundary (R. v. Pratt 1855).

In this connection, however, two rules of law must be borne in mind: The first we would mention is that a man's right on a highway is limited to a right of passing along it in a lawful manner. He has no right to use a highway as a shooting ground any more than he has to play football on it. As soon as he shoots (possibly as soon even as he has the intention to shoot), he becomes a trespasser. Therefore, a man who in the daytime fires at game from a highway over land where he has no right of shooting is guilty of a trespass in pursuit of game, and liable to be prosecuted. He has "entered or been"—not, indeed, on the land where the game was, but on the highway where he had no right to be, as he was not lawfully using it. And the same would also apply to a man standing on the highway and sending his dog to range on another's land. The *trespass* is in being on the highway for an unlawful purpose, and the *pursuit* is effected by shooting over or sending the dog to range on the adjoining land.

The second rule of law we would draw attention to is that if the killing and picking up of the dead game follow close upon one another, or if, although not following closely, there was at the time of killing the game an intention to take it when opportunity offered, then the killing and subsequent entry to take the dead game are

to be considered as one continuous act. Now, there *cannot* be a trespass in pursuit of *dead* game; therefore, if a man sees a dead pheasant on his neighbour's land, and goes on to the land and picks it up (even though it be the pheasant he himself unlawfully shot the previous day, if he *then* had no intention of taking it and was not trespassing), he is not guilty of a trespass in pursuit (Kenyon v. Hart, 1865), though he may be guilty of stealing. When, however, the killing and picking up follow close on each other—are one continuous act, or when, as above mentioned, the intention to take has not been abandoned, although some time has supervened—then the entry on the land to pick up the game is considered an entry in pursuit of game, and a conviction may be obtained (Osbond v. Meadows, 1862). And this rule would hold good in strict law if the dead bird—having been shot whilst over the neighbour's land, and therefore unlawfully—dropped close to the boundary, and the only entry necessary to take it was stretching the arm over the boundary, or putting one foot over a ditch.

If a man finds dead game or rabbits on another's land, and appropriates them, he is guilty of larceny, and it makes no difference that the game or rabbits so found are some he shot himself on the previous day, and did not at the time intend to pick up. So it is a difficult question to distinguish an act which is larceny from one which is a mere step, if we may use the expression, in the offence of trespass in pursuit. This question of subsequent entry on the land in search of dead game previously killed by the searcher when standing on another's land is well illustrated by a recent case (Horne v. Raine 1898).

In this case the defendant, whilst standing on an allotment in his own occupation, shot a grouse on adjoining land over which Lord Westbury had the shooting. This was at seven o'clock in the morning. Probably thinking he might be seen if he went after the bird then, the defendant went away. Soon afterwards Horne, Lord Westbury's watcher, found the grouse dead, but quite warm, and took it away. At 4.30 in the afternoon the defendant was seen on the adjoining lands over which Lord Westbury had the shooting, near the spot where he had shot the grouse, and apparently looking for it. He was promptly charged with the offence of trespass in pursuit in the daytime.

The justices found, as a fact, that the defendant was looking for the dead bird when he was seen on the land in the afternoon, but refused to convict on the ground that there could not be a trespass in pursuit of *dead* game. A case for the opinion of the High Court was, however, stated, and the Lord Chief Justice and Mr. Justice Channell held that it was clearly a case in which the defendant ought to be convicted. If he had gone on the adjoining land in the afternoon *on a fresh impulse* it would have been different; but the justices having found that he went to look for the bird he had previously shot, they were bound to convict, and it did not matter that the dead bird had been previously removed.

From the above case the defendant might have learnt this moral: I ought to have waited till night-time (*i.e.*, more than an hour after sunset) before going to look for the bird, even if I had to take a lantern with me, for then (if I had found it) I couldn't have been convicted—not of

trespass in pursuit in the *daytime*, because the entry was *at night*, and not of night poaching, because the game was dead.

On the other hand it should be noted that, according to a recent decision of the Divisional Court (Stiff v. Billington, 1901), where a trespasser has entered in search of game, it is no defence that he had no intention of killing it *then*; if his search was with the object of marking down or driving the game so as the better to be able to kill or take it at some subsequent time, the offence has been committed. Indeed it would seem to result from the decision referred to that the mere looking for or following of game without any intention of killing or taking it at all (even at a future time) is an offence within the statute. The case in question was one in which a keeper had been prosecuted for trespass in search of game in the daytime. He was found with a dog on land adjoining that over which his master had the sporting rights, and he alleged that his sole reason for being there was to test the question whether the occupier of the adjoining land was entitled to plant mustard there, and so attract the pheasants his master had reared, and the magistrates found as facts that the keeper had (in pursuance of his master's orders) trespassed on the adjoining land; that there was game there, and that he was in search of it; and, consequently, of course, convicted him.

On the question of law stated for the opinion of the High Court, the judges had no hesitation in affirming the conviction on the justices' finding of fact, notwithstanding there was no evidence of intention to kill the game.

Owners of warrens or breeding grounds lawfully set apart for the breeding of hares or rabbits have additional protection given to them by the Larceny Act, 1861. (See subsequent chapter, title "Warrens.")

We have already (chapter 4) discussed the question of foreshores and incidentally of navigable tidal rivers, and have seen that though where the Crown is still the owner—as is a presumption of law in all cases till the contrary is proved—although the Crown's title is a beneficial one and the public might therefore be excluded from shooting, still it is not the practice to exclude them; and it may be taken as a rule of practice, if not of law, that the public are allowed to exercise shooting rights in such places. This would include all sea shores, estuaries and tidal rivers as far inland as the ordinary high tides reach—so long as they are Crown property.

Where, however, by a Crown grant, any foreshore, estuary, or bed of a navigable river has become vested in a private individual, then all right of shooting thereover has been lost to the public.

With regard, however, to navigable rivers which are not tidal—that is, above the point to which the tide reaches—the law is different. They are public highways, it is true, but the beds of them and the water, for the time being, flowing above such beds belong, like the soil of most public roads to private owners—usually the owners of the adjacent lands on either side. The rights on such rivers are somewhat similar to those on a public road. Everyone has the right of sailing (rowing, steaming, etc.) over them, but the right of shooting belongs to the owners of the river bed, and any person

endeavouring to take game on a non-tidal river renders himself liable to a prosecution for trespass in pursuit.

As to what is a tidal river, and how far the tide rises, is a question of fact in each case, and it is not authoritatively settled what the expression "tidal river" or "point to which the tide rises" means. It is well known that in many of our flat, low-lying districts, particularly in the eastern counties and the district of the Broads, the water rises and falls very perceptibly at points many miles from the river's mouth, and where the river is but little wider than a good-sized canal; but in some instances the rise and fall is caused by the "backing-up" of the fresh water by the inrush of the sea miles below. It used to be considered that a river was only "tidal" as far as the sea came, in other words, as far as the water was brackish during ordinary tides of the sea. This contention appears, however, to have been abandoned in recent times, and was not argued in the well-known "Hickling Broad Case" (Micklethwait v. Vincent, 1893), where Mr. Justice Romer held on the evidence that the Broad was not tidal, and that the public had no right of shooting over it.

In a recent case (8th May, 1908) before a Norfolk Bench of Magistrates, where some gentlemen were prosecuted for angling by the person claiming the ownership of Rockland Broad, Lord Lindley, the Chairman of the Bench, a most distinguished lawyer, definitely laid it down that the question of saltness or otherwise was immaterial. On the evidence the Broad was held to be tidal water.

We have pointed out that trespass in pursuit may be committed on a highway (including a navigable river)

without entry upon the adjoining lands, and before leaving this part of our subject we would point out that this—which at first blush might appear to be an undue extension of the words of the Game Act which require an entry or being on another's land to constitute an offence—is in reality merely an application of elementary principles of the common law.

By the common law, as we have before seen, the right to game is vested in the owner of the land on which it is found, or to whomsoever he has granted it. By the common law, also, the owners of lands adjoining a highway on either side are presumed, until the contrary is shown, to own the soil of the road up to the middle of it. Therefore the right of shooting on either side of a road belongs, *primâ facie*, to the adjoining owner on that side and the necessary "entry and being" (for the cases have decided that "enter or be" is equivalent to "enter *and* be") is complete when the trespasser passes along the road, which for this purpose is the land within the Act.

When a man unlawfuly shoots from a highway at game over the adjoining land, it is not the adjoining close on which he commits the trespass in pursuit of game, but the actual highway on which he is standing.

Even if it were shown, as it might be in some cases, that the soil of the highway was vested in some person other than the owners of the adjoining lands, it would make no difference; the offence would be committed just the same, for the soil of the highway would belong to someone, and that someone would not be the person shooting. Therefore the latter would be on some land (the highway) on which he had no right of shooting, and the fact that he shot at game over the adjoining land

(over which also we presume he had no right of shooting) would be sufficient evidence for the magistrate to conclude that he was on the road with the intention of finding the game there also, if by chance there might be any. The two essentials, therefore, the "entry or being" (on the road), and the intention of taking game, would be present, and the offence complete.

The exception in favour of coursing (see Section 35 of the Act of 1831) has been dealt with in a previous chapter.

Prosecutions for trespass in pursuit of game must be commenced within three months of the alleged offence (Game Act, Section 41).

It is perhaps well to deal somewhat more fully with two statements we have made that might, if not further explained, seem contradictory. We said that sending a dog from a highway on to the adjoining land might be trespassing in pursuit of game, whilst it was not an offence punishable summarily to send a dog over your neighbour's boundary to round up the game birds, or chase a hare or rabbit.

This difference we can perhaps best explain by recording some advice we recently gave to a gentleman of the poaching fraternity, one William Wanderer, more usually known as Wandering Will. He came in with a summons for trespassing in pursuit in the daytime, which he said the police had made out for him because they had a spite against him and didn't know who the right man was.

An Interview.

From the tale Wandering Will told us, it appeared that on the Friday evening previous, a little after sunset,



"Mistaken identity?"—p. 161.

a policeman on duty was walking down a lane which ran between some of Squire Broadacre's woods—"A public 'ighway, where anybody 'as a right ter be," Mr. Wanderer hastened to add; that he saw a man some distance ahead with a dog—"a lurcher 'e says it was, *like one as I've got, to protect my 'ouse with*," explained our client. The man made a sign to the dog with his hand, and the dog ran into a wood and came back in a minute with a hare in his mouth. The policeman gave chase, and the man gave another sign to the dog and bolted; the dog dropped the hare, and ran across a field in another direction. The policeman blew his whistle; that brought the squire's keeper to the lane, and he too gave chase, but the man got away. They (the policeman and the keeper) were, however, prepared to swear the man was Wanderer, and the dog was his, and they had got the hare. "It war a very cloudy evenin' and rainin' a bit, so they couldn't see very far."

This was the substance of the story told by Wandering Will. Whether he had got round the policeman to get at his story, or whether he had the main facts of the event from the man with the dog, we did not stop to inquire, but went on taking down the evidence to prove the alibi.

When we had finished, our visitor remarked that he didn't see that we should want all that, as in his opinion "there warn't no case o' trespassin' in pursuit o' game if so be as the magistrates did believe all the lies the bobby and the keeper told 'em."

"How do you make that out?" we asked, curious to know the reason for his opinion.

"Well, warn't it you as defended a man for sending a

dog into somebody else's land a few weeks back, and didn't you get him off?" inquired Wandering Will.

"Oh, you mean the case of Mr. Steelum, who was shooting on his own land, and sent his dog across the boundary into his neighbour Mr. Cross's land to drive out some rabbits?" we replied.

"Yes, that's the one; I thought as I 'adn't come to the wrong shop," said the client. "And I don't see no difference between that case and this 'ere."

"No, perhaps you don't," we answered; "that's where a lawyer comes in. But I'll just explain it to you. You see, when Mr. Steelum, whom, as you say, we defended successfully, sent his dog into another man's land, there was no doubt he was in pursuit of game (although he said the rabbits were really his own, and bred in his earths—which didn't make any difference); but he was standing on his own land, where he had a perfect right to be.'"

"Well, warn't I?" began the Wanderer, "*I mean, warn't this 'ere man as the magistrates may think war me,*" he hastened to correct himself, not without some sign of confusion. "Warn't 'e a-standin' on the 'igh road, where 'e 'ad a perfect right ter be?"

"Stop a bit," we answered, "and I'll explain it to you. The section of the Game Act, 1831, that deals with day poaching says that in order to commit an offence you must enter or be upon land in search or pursuit of game. That means, there must be an actual personal entry or entry of part of the person on someone else's land. Now, in Mr. Steelum's case, he didn't go on to Mr. Cross's land, or even put a foot on, in, or stretch his arm across it. He stayed on his own land the

whole time; therefore the magistrates were bound to dismiss the case."

"Well," said our somewhat ungrateful client again, "warn't I—*warn't this man*—on the public 'ighway, and ain't that my land? Leastways, as much as it is anybody else's."

"No, my friend," we replied, "it isn't. The road belongs to someone just as much as the adjoining field does. It doesn't belong to the public; they only have a right of passage along it, and as soon as anyone of the public does anything that would be an offence on private land, he becomes a trespasser."

"So you think as *this* man with the dog" (there was no slip this time) "was a-trespassin' in pursuit o' game?" asked our friend.

"I do, certainly," we said. "In the case of Regina v. Pratt, decided in 1855, the facts were that a man, whom we will call A., was seen standing on a public road opposite B.'s land, and he sent his dog into B.'s covert, and a pheasant flew out, and A. shot at it. The magistrates convicted A., who took the case up to the Court of King's Bench, and A.'s counsel argued very plausibly that, as the Court had previously decided there must be a personal entry, A. couldn't be convicted. The judges, however, said that, although the mere sending of a dog into another's land was not a trespass in pursuit of game within the Act, yet that, in this case the man himself was trespassing on the highway because he had no right to be there for the purpose of shooting someone else's game; so they affirmed the conviction."

"But didn't you say as the man 'ad a gun and shot at the pheasant?" said our client.

"Yes, he had; that's quite true, but that doesn't make any difference. You see, it isn't the shooting that makes the offence—it's the being on land (which, as you see, includes a highway) on which you have no right of sporting in pursuit of game. It doesn't matter how you intend to take the game, whether you have a gun or dog, or both. If you have a gun, the evidence is a bit stronger, that's all. But in your case—I mean, in this case—the evidence which you say the prosecution have would be quite sufficient to satisfy any bench of magistrates of the intention to take game."

Wandering Will paused a moment before going on. He was evidently thinking of some argument to floor us.

"Warn't there a case," he began at last, "afore this ere bench about five years ago against poor old 'Shootin' Joe'? ('e's dead now). They called him 'Shootin' Joe' 'cause 'e never 'ad a gun, but used to go out wi' 'is dog and nets. Didn't 'e get run in for being in the road one night with 'is dog, and didn't 'e get off? Leastways, I know 'as 'e did."

"Your memory for these cases is better than ours," we said, "but perhaps you're quite correct. Didn't you say it was at night?"

"Why, yes, o' course it war—a moonlight night, I reckerlect. They never found any nets that night," he added, with a grin.

"That," said we, "makes all the difference, and you may like to have this tip. Night poaching is dealt with by different Acts to that dealing with day poaching, and although for certain special offences the night-poaching Acts embrace highways, they don't for others; so that if all the police or the keepers have got against

a man is that he was on a highway at night, and sent his dog into someone else's coverts after game, they cannot get a conviction."

"That's all right; now I begin to see where I are," said the client; "but suppose I 'ave a gun as well as a dog?"

"Still you're safe," we replied, "so long as you keep to the road, and are not seen to kill anything, and your dog isn't seen to catch anything."

"And what if I 'appen to be seen walkin' across Squire Broadacres' field at night, and they don't see me shoot, nor any game, or anything else?" asked the inquiring client.

"Ah, then you must leave your gun at home or somewhere. Your gun is enough to convict you if you are on somebody else's land where there's any game—with your well-known character," we added to ourselves, "but your dog alone isn't."

"An' what about rabbits?" began our client again, but we cut him short.

"No, Wanderer, you've had quite enough for your money. You mustn't try and ruin us poor lawyers. When you get into trouble again will be quite time enough to answer any further questions you've got. Good day to you."

CHAPTER XII

NIGHT POACHING



THE subject matter of our present article is by far the most serious of any we have had to deal with, so far as the game preserver is concerned, and on all large estates a regular army of night watchers is employed to prevent the depredations of the night poacher. On moonlight nights pheasants on the perch fall easy victims, and a skilful hand can pick them off (the same tree), one by

one, without disturbing the other birds or making any noise by his operation, which adds considerably to the difficulty of detection, and to the anxieties of friend Velveteens when his beats are not shot until late in the season. Sec. 12 of the Night Poachers' Act, 1828, very clearly lays down the definition of "night." It enacts that "night shall be considered to commence at the expiration of the first hour after sunset, and to conclude at the stroke of the last hour before sunrise. The time is not reckoned by Greenwich time, but in accordance with the real or astronomical time of the *locus in quo*."

The two Acts of Parliament which regulate poaching by night are the Night Poachers' Act, abovementioned, and the Night Poaching Act, 1844, the second of which was merely passed to extend the provisions of the former to highways and roadsides. As to how far it has accomplished its evident object, we shall have something to say later.

Sec. 1 of the 1828 Act may be conveniently condensed as follows: If any person shall by night unlawfully take or destroy any game or rabbits in any land, whether open or inclosed, or shall by night unlawfully enter or be in any land, whether open or inclosed, with any gun, net, engine or other instrument, for the purpose of taking or destroying game. . . . First offence: imprisonment, with recognisances, or in default, a further term. Second offence: heavier term and more substantial recognisances. Third offence: a misdemeanour, punishable by penal servitude, or imprisonment with or without hard labour.

Section 2 of the Act makes it an indictable misdemeanour, punishable as last mentioned, if a person found committing the offence described in Section 1 assaults or offers violence with an offensive weapon towards any person authorised to arrest him (as to which, see title—Arrest at Night).

This Act, it will be noticed, mentions particularly open or inclosed land, but says nothing of highways. Being a penal Act, according to the ordinary rule, it was construed narrowly rather than broadly, and it was therefore held that highways and roadsides were not within the Act. We have before seen that the word "land," in the section of the Game Act, 1831, which deals with day poaching, has been held to include a highway, but in the latter Act the word is used without any qualification, whereas in the Night Poaching Act now under consideration, the addition of the words "open or inclosed" indicated to the minds of the judges who had first to construe the Act that only cultivated land was intended to be included.

This was a weak spot in the Act, which is somewhat quaintly described in the preamble to the Night Poaching Act, 1844, passed to remedy the defect, the latter part of which reads as follows: "And whereas the provisions of the said Act" (of 1828) "have of late years been evaded and defeated by the destruction by armed persons at night of game or rabbits not upon open or inclosed lands as described in the said Act, but upon public highways and other roads and paths leading through such lands, and also at the gates, outlets, and openings between lands and roads, highways and paths, so that not only has the destruction of game and rabbits not been



"Mister Six-and-Eight says:—'It's no offence to be on land at night with nets for rabbits only.'"—p. 169.

prevented, but the risk of murder and other grievous offences contemplated by the said Act has been increased, and great dangers and alarm occasioned to persons using such roads, highways and paths." The Act goes on to provide that all the pains, punishments, and forfeitures imposed by the Act of 1828 on persons taking or destroying game or rabbits by night in open or inclosed land should be extended to the unlawfully taking or destroying of game or rabbits on any public road, highway, or path. These two Acts must, of course, be read and construed together, and in their construction by the Courts the following points have been laid down and explanations given.

"To take" means to catch or to kill, and not necessarily to take away so as to deprive the lawful owner of the game so taken (R. v. Glover, 1814), and it would appear that the section would apply to a tenant farmer who unlawfully took or killed game which was reserved to his landlord or to a lessee.

Rabbits are omitted from the second part of Section 1 of the Act of 1828 (that dealing with the offence of being on the land with intent). It follows, therefore, that it is no offence to be on land at night with a gun or nets in search of rabbits only if none are taken or killed, and the object of the poacher who is caught at night with a gun or net will be to conceal the rabbits he has taken, and to prove that he was not in search of game.

Again, dogs are not mentioned in the Act, so that if no gun, net, or other instrument (a snare, for instance) is found, the presence of a dog will not tend towards a conviction, even although he were seen chasing a hare. The wily poacher knows the law pretty well. He knows

that he may go in company with a pal and wring the necks of any number of pheasants roosting, and if his pal can get safely off with the booty whilst he himself leads the keepers a dance in the opposite direction, and no untoward event happens to bring forward clear evidence of the actual taking of the birds, he is pretty safe of an acquittal. The keepers know the pheasants have been taken, but cannot prove it, whilst the magistrates are satisfied that the arrested poacher was in search of game, but cannot convict, owing to the absence of evidence of the success of the search, and to the absence of any gun or other instrument.

To take another point. The amending Act of 1844 deals, it will be noticed, with the taking and destroying only, and not with the offence of being on land with intent. It follows, therefore, that to be on a highway, road, or path at night with a gun, net, or snare, is no offence, even though satisfactory evidence be given of the intent to take game or rabbits. The latter must be "taken." If a poacher, therefore, is caught by a keeper at night in the act of firing at a hare or pheasant in the road, it may be that on the correctness of the former's aim will depend the issue whether he gets fourteen days or more, or gets off scot free. If that shot is the only evidence, he cannot be convicted unless he kills his bird, hare, or rabbit; whereas, had he been over the hedge in the field, a bad shot would not have saved him. If, however, two or more poachers are out on a joint adventure, and one stands in the road whilst the other or others go on the adjoining land, with guns, etc., in search of game, the former may be convicted with his companion or companions who have

actually brought themselves within the Act. In like manner, if they were all on the highway, and one only was proved to have taken game or rabbits, all can be convicted.

Comparing night poaching with day poaching, we consequently find the following difference. *Assuming that no evidence of the actual taking of game or rabbits is forthcoming, then:*

"In the daytime," the presence of a dog or the carrying of a gun or net, or the setting of a snare or a trap, either on another person's land or on the highway, may be sufficient to convict a man of an offence, the magistrates having to be satisfied merely that the defendant was in pursuit of game or rabbits. "At night," the fact of a dog being with the accused person is practically worthless evidence; so likewise is the seizure of a net or spring traps, because nets and traps are used almost entirely for rabbits, which it is no offence to be in pursuit of. The magistrates would have to be satisfied that hares were the intended quarry. Again, at night the pursuit of game is no offence without the gun, net, snare, etc., and if on a highway or road, not even with these; so a man may with impunity allow himself to be caught setting a snare for hares on a highway if he has not actually taken any at the time he is himself taken.

Waste land does not appear to be within the Act of 1828. Apparently, no offence can be committed at night on such land, though roadside wastes are, as a rule, part of the highway, and so within the Act of 1844 (Veysey v. Hoskins, 1865).

The last, and most serious, offence that is dealt with

by the Night Poaching Acts is that created by Section 9 of the Act of 1828, which makes it a misdemeanour, punishable by penal servitude up to fourteen years (20 and 21 Vict. c. 3) or imprisonment with hard labour up to two years (54 and 55 Vict. c. 69) for any *three* or more persons together to unlawfully enter and be in any land, whether open or inclosed, for the purpose of taking or destroying game or rabbits; any of such persons being armed with a gun, cross-bow, firearm, bludgeon, or any other offensive weapon.

The section does not, it will be noticed, extend to a highway, nor do the words "open land" include strips of land by the roadside (Veysey v. Hoskins before cited). But as we stated when dealing with the lesser offence, if one of the three remains on the highway whilst the other two enter the adjoining land, they may all be jointly convicted on a charge under this section (R. v. Whittaker, 1848).

If, however, three men, armed with guns and a net, go out together and set the net in a gateway on the roadside, sending a dog into the field to drive hares into it, and then one goes off on his own account to have a shot at the pheasants in the woods, the others staying in the road, the three cannot be convicted under this section, because the shooting of the pheasants was not a joint adventure of the three, and as far as the adventure was a joint one, it was on the highway only (see R. v. Nickless, 1839).

What is an "offensive" weapon within the meaning of this section is a question of fact for the jury. A stick or large stone may be such a weapon if brought and used for the purpose of resistance (Rex v. Grice, 1837; Rex v. Fry, 1837). If the accused persons are carrying only



"If the poachers attacked the keepers with these sticks."—p. 173.

walking sticks, or small sticks that they might use to knock hares or rabbits on the head with, the presumption would be that they were not armed with offensive weapons within the Act; but if the evidence showed that the poachers attacked the keepers with these same sticks or threatened to break open their heads with them, the jury would be justified in holding them to be offensive weapons.

As to the offence created by the Larceny Act, 1861, of taking hares or rabbits in a warren or breeding ground, see the title "Warrens" in a subsequent chapter.

Prosecutions for night poaching offences punishable on summary conviction before the magistrates must be commenced within six calendar months, and for misdemeanours punishable upon indictment, within twelve calendar months after the commission of the offence, except in the case of the misdemeanour of taking rabbits or hares in a warren or breeding ground for which no time limit is imposed.

Costs of the prosecution of any indictable misdemeanour may now be ordered to be paid out of the local funds (Costs in Criminal Cases Act, 1908). Previously a person prosecuting for an indictable offence under the Acts of 1828 and 1844, had to bear all the costs.

In dealing with poaching and the laws appertaining thereto, an old client crosses the vista of our memory. He was head-keeper to Sir John Rocketter, but he has long since departed from this life, and is now in the happy hunting-grounds of his forefathers. He was a client more from necessity than from choice, and to the last he held the majesty of the law in the greatest contempt:

"When we want anything done you never dare do it. There's always something in the way, or some difficulty insurmountable. Even when I catches a chap red-handed, and brings him up before the bench with the very birds he's poached, and the gun and dog he's got them with, he spins some cock-and-bull story and gets off! No, no, sir! Law may do for them as likes it and can afford luxuries, but let me go my own way to work, and I can do without all them gentlemen with the white wigs, black gowns and the blue bags. No matter to me whether the poaching vermin be two-legged, three-legged or four, I can always circumvent 'em with traps—traps—traps! Them's the boys for me!"

He certainly was a genius at trapping, but it often brought him into trouble, and the old man had many a sworn foe who had suffered by reason of his ingenious devices.

As he so often said to us:

"Instead of arresting a poacher by night, and running the risk of getting my head broke in the first place, and being successful in prosecuting him in the second, I much prefer to give him a dose of my physic, which is sure to lay him up for a week or two, and make him remember my beat in a manner he is not likely to forget or wish to have repeated at any future date."

Pitfalls and "faked" planks were his special delight, and his master having consulted us carefully beforehand, he laid his schemes in such a manner that the law could not touch him unless he so far forgot himself as to assault his hapless victim when he found him at his mercy.

He would select for his pitfalls a part of the woods

some distance away from the high road, where the birds loved to perch in the seclusion of their sylvan retreat, and he would strengthen the denseness of the undergrowth, making it impenetrable except in certain particular places. These breaks in the thicket led to small through passages, in the centre of which the pitfalls would be dug and secreted. Woe betide the luckless being who fell into the depths of these artfully contrived man-traps, although they were not such in the eyes of the law.

Another favourite method of his for causing damage to poachers was the stretching of a stout wire across the glades or openings at a height of about eighteen inches from the ground. This was not a pleasant obstacle to fall over on a dark night, as the writer can testify, but to dogs it was almost as fatal as the dog-spear, for it was so placed that any hare or rabbit would run under it, but an ordinary poaching dog would be caught just under the chin, and if going at a great pace, would be cut almost in halves by the contact.

The plank trick of our knowing client was a great success, barring one or two minor accidents, when he once landed his noble master into a muddy marsh ditch, and the same performance was repeated to an old friend when visiting the coverts for shooting. The *modus operandi* was to take a good strong-looking plank and saw it nearly in half about the middle, filling up the crevices thus made with sawdust and mud, so that the defects were unnoticeable, and the plank looked strong enough to carry a horse. In a covered drain, hedgeway, or clump of bushes, our friend would pretend to conceal the doctored plank, leaving one end exposed as though

it had been carelessly left, and in such a position that the trespasser would be almost sure to discover it and congratulate himself upon his find, thinking at the time what a silly old fool the keeper must be to leave his planks so carelessly hidden. Possibly his opinions would undergo some considerable change whilst he was making his way homewards, with stinking mud and water oozing from every rag upon him. It was never safe to attempt to climb over a rail, fence or any other similar or likely-looking place in a hedge bounding a footpath, save a public highway, as it was almost certain to have been doctored by our friend, with the laudable view of ensuring evidence of malicious injury to Sir John Rocketter's property in case any unfortunate person with a poaching turn of mind happened to take it into his head to go that way.

These artful dodges are outside the pale of the law, and, in our innermost heart we are compelled to admit, saving all just exceptions as is usual in legal phraseology, that they constitute a far better remedy than the fine of a few pounds, an admonition from the bench, or even six weeks' hard labour without the option of a fine. They also have the benefit of causing poachers to avoid the particular beats where these mysterious traps are laid, as poachers are generally cowards, and they never like to encounter hidden foes.

Once our friend in the velveteen jacket got himself into serious trouble, but he pulled through and came up, as he always did, smiling at the finish. It was in the month of November, before his pheasants had been shot, when one night his beat was visited by a gang of well-known poachers. The keeper was alone, and he had the

courage to assail the poachers, four in number, whilst they were busy shooting his pheasants from the perch with air-guns. He had a gun with him for the purpose of giving an alarm to watchers and others located at different parts of the estate, and when he first came up with the poachers, and saw who they were, he told them he would fire his alarm gun, which he did; but instead of firing it off into the air he took a shot (as he averred) at random into the bushes. Now it so happened his cartridges contained shot, and it also happened that one of the gang, the most notorious poacher in the whole country-side, was concealed behind the very identical bush into which the keeper fired, by reason of which carelessness (?) the poacher got hurt, and was incapacitated from sitting down for several months, besides other serious injuries.

The poacher thereupon sued the keeper for heavy damages for assault and injury, but as our old friend adhered religiously to his original story that it was purely an accident he gained the day. In fact, he laughed on both sides of his face, for the gentleman who was injured, together with his companions, were each the recipients of a somewhat lengthy term of durance vile for their poaching escapade.

As they put it, this was adding insult to injury. Perhaps it was; but then the path of the poacher is not one which is at any time strewn with roses.

Again, our old friend showed his astuteness in outgeneralling an army of would-be eggers, in a manner we must certainly mention. Somehow or other he had derived information that on or about a certain date a regular army of eggers would visit his beat, which was

known to be one of the best in that part of the neighbourhood, and the poachers hoped that by their superior numbers they would be able to make a haul worthy of their efforts and consideration. But our friend was quite equal to the emergency. He visited the Hall, informed his master of his knowledge, and after a council of war he returned, and shortly afterwards was busy distributing firearms of some kind or other to every watcher, farm-hand, or volunteer game preserver he could persuade or press into his service. To each of them also he issued private instructions.

The eventful morning soon arrived. As our hero was quietly sauntering up a green lane some time about daybreak he met a portion of the gang, and suspecting their movements, he stopped a while to discuss the weather, not forgetting at the same time to give his preconcerted signal of three successive shots. The eggers were somewhat amused at this, as they thought that at most one or two watchers would put in an appearance, and they flattered themselves they were sufficiently strong in numbers to have a man along each hedgerow at the same time. But again they were doomed to disappointment (as was customary when they were visiting this beat), for within half an hour of the signal every one of the watchers, under-keepers, and volunteers *pro tem.* was out, the word having been passed along the whole line.

It was indeed lucky the preparation had been so complete, for the would-be eggers found themselves completely baffled. Wherever they went they found a man or a son of the plough armed with a musket or a large horse-pistol (for alarm) ready to accompany them whithersoever they listed.

It was no go, and they were forced to admit that the game was up, for had one of them found a nest or done any damage, a shot of alarm would have been fired, and the culprit would have been detected and identified without chance of escape.

In disgust, the eggers adjourned to a distant public-house, where they assembled to swear over their early pewters against that———! ———!! ———!!! keeper, and against everybody and everything that had aught to do with him.

The above are a few examples, taken at random, from the storehouse of our memory, and they but tend to corroborate the saying of Zimmermann, that "Laws act after crimes have been committed; prevention goes before them both."

CHAPTER XIII

Arrest of Poachers

The Poaching Prevention Act, 1862

IT is extremely important that all persons interested in the preservation of game should understand within what limits the right of arrest of offenders against the game laws may be exercised. The common law gives no right to arrest a trespasser, though an owner or occupier of land may use sufficient force to evict a trespasser if on request he refuses to leave. The Game Act, 1831, and the Night Poaching Acts of 1828 and 1844, however, contain certain powers of arrest, which we will proceed to summarise.

Arrest in the Daytime

No one may arrest a trespasser in pursuit of game merely because he is so trespassing, but certain persons are authorised to require any person found trespassing in pursuit (either of game or woodcock, snipe, quails, landrails or rabbits) to quit the land and to give his Christian name and surname, and place of abode; and in the event of the trespasser refusing to quit, or returning to the land, or refusing to give his name and address, or giving a false name or address, or giving an address which is clearly insufficient to enable him to be found, he may be forthwith arrested and taken before a magistrate (Game Act, 1831, sec. 31). The refusal of the trespasser

to give the above particulars (whether he be arrested on the spot or not) entails a fine not exceeding £5 and costs, and in default of payment, imprisonment with hard labour.

The only persons who are entitled to make the demand for name and address are: (1) The occupier of the land, whether he has the right of shooting or not; (2) The person having the right of killing game on the land by virtue of reservation or grant, *e.g.*, the landlord who has reserved the game, or the sporting tenant; (3) The gamekeeper or servant of either of the above; and (4) Any person authorized by either of the above.

In case of such refusal by the trespasser to comply with the demand as above stated, the arrest may be effected by the person making the demand, and any other person he may ask to assist him. If the trespasser is arrested, he must be taken before a magistrate as soon as conveniently can be, and in any case within twelve hours (sec. 31). It will be seen that the penalty that may be imposed on a conviction for refusal to quit or to give name and address is greater than a conviction for trespass in pursuit in the daytime—the limit of the latter being £2 and costs, unless where five or more persons are together trespassing, when the limit is £5 each and costs (sec. 30). If, therefore, the trespasser can, by intimidating the keeper or other authorised person from coming within a short enough distance to make the request, it may be to his advantage, and there is no provision in the Act to meet this case unless there be five or more trespassers together.

If, however, there be five or more trespassing together,

any of them being armed with a gun, and any of them, by threatened violence, prevents the demand being made, the one who so offers violence, and every person aiding and abetting him, is liable to a £5 penalty and costs, in addition to the penalty (which, in this case, would be up to £5 and costs) for trespassing in pursuit (sec. 32).

As will be judged from the foregoing epitome of the law as to arrest in the daytime, the power given is of little use. A trespasser may just as well give a false name and address (and take the risk of a slightly heavier penalty if discovered) as give none at all, and, in fact, that is what nine men out of ten would naturally do if they thought they were not known to the person accosting them. The keeper who catches a man trespassing in pursuit is therefore in this position: If he knows the man, there is but little use asking his name and address simply on the chance of his giving wrong ones, and so rendering himself liable to arrest and to the heavier penalty before mentioned; whilst if, as is very often the case, the trespasser knows he is known, he will not be tempted to give inaccurate information.

The keeper will be much more likely to say: "It's no use your trying to hide behind that hedge; I can see you, and I know you, Bill Johnson, and you know me," or something of that sort.

As somewhat analogous to the power of arrest, it may here be mentioned that the same persons who are authorised to demand the name and address of a trespasser in pursuit, may also require him to give up any game (not rabbits, woodcock, &c.) in his possession which appears to have been recently killed, and in default of compliance may by force take such game for



"The keeper who catches a man trespassing in pursuit."—p. 182.

the use of the person entitled to the game on the land in question (sec. 36).

Arrest at Night.

If any person is found committing the offence of taking or destroying game or rabbits on any land, open or inclosed, or upon a highway, or found on land (not being a highway) with a gun, net, engine or other instrument for the purpose of taking or destroying game, he may be arrested by the owner or occupier of the land—or in case of a highway, by the owner or occupier of the land on either side of the spot where the offence is committed —by any person having a right of free warren or chase thereon, by the lord of the manor in which the land is situated, or by the gamekeeper or servant of any of the above, or by any person assisting such gamekeeper or servant.

The person arrested must be actually found com mitting the offence, and cannot be arrested merely because he has at some little time previously committed it, but if actually seen committing the offence he may be pursued if he tries to escape arrest, and followed up and arrested elsewhere.

If arrested he must be handed over to a policeman or police officer as soon as possible. If the poacher assaults or offers violence with a gun, stick, club, or other offensive weapon to any person authorized to arrest him, he is guilty of an indictable misdemeanour, punishable by penal servitude or imprisonment with or without hard labour (Night Poacher's Act, 1828, sec. 2, as extended by the Night Poaching Act, 1844).

It will be seen that the right of arrest given by these

to set out the gist of each section before making any comments thereon.

Section 1, *inter alia*, defines "game" as any one or more hares, pheasants, partridges, eggs of pheasants and partridges, woodcocks, snipes, rabbits, grouse, black or moor game, and eggs of grouse, black or moor game.

Section 2 is most important, for it empowers any constable or police officer in any county, borough or place in Great Britain and Ireland, in any highway, street, or public place, to search any person whom he may have good cause to suspect of coming from any land where he shall have been unlawfully in search or pursuit of game, or any person aiding or abetting such person, and [of] having in his possession any game unlawfully obtained, or any gun, part of gun, or nets or engines used for the killing or taking game, and also to stop and search any cart or other conveyance in or upon which such constable or peace officer shall have good cause to suspect that any such game or any such article or thing is being carried by any such person; and should there be found any game or any such article or thing as aforesaid upon such person, cart, or other conveyance, to seize and detain such game, article or thing; and such constable or peace officer shall in such case apply to some justice of the peace for a summons, citing such person to appear before two justices, etc., as far as regards England and Ireland, and before a sheriff or any two justices of the peace in Scotland; and if such person shall [be found to] have obtained such game by unlawfully going on any land in search or pursuit of game, or [to] have used any such article or thing as aforesaid for unlawfully killing or taking game or shall [be found to]

have been accessory thereto, etc.; penalty on conviction not exceeding £5, with forfeiture of game, guns, parts of guns, nets and engines, which the justices shall direct to be destroyed or sold for the benefit of the treasurer of that particular county or borough. In case of dismissal of the summons, the game or guns, etc., found on the person summoned are to be returned, or the value thereof paid to them.

Sections 3, 4, 5, and 6 deal only with the recovery of penalties and the methods of procedure.

We doubt whether this Act would ever have been passed had it not been for the numerous affrays which were so constantly reported in the press some fifty years ago. At that time the shoulder-gun saw new developments, and game preservation assumed a more organised form. Village loafers, who had hitherto picked up a promiscuous rabbit without much hindrance, found the vigilance of gamekeepers and watchers a nuisance and annoyance to them, and tempted as they were by the overstocked preserves, they banded themselves together into gangs and defied the law, which the jealousy of a non-sporting public had caused to be laid down in a very restricted manner.

Constables had really no power to interfere until a breach of the peace occurred. As for an appeal to him to assist in the apprehension of a poacher, it was, until 1862, more than his place was worth, and his appearance in Court in any game case was generally looked upon with great disapproval. But the Poaching Prevention Act remedied this evil, and appealed directly to the police for the protection of game.

By its aid the country police are now of great

to set out the gist of each section before making any comments thereon.

Section 1, *inter alia*, defines "game" as any one or more hares, pheasants, partridges, eggs of pheasants and partridges, woodcocks, snipes, rabbits, grouse, black or moor game, and eggs of grouse, black or moor game.

Section 2 is most important, for it empowers any constable or police officer in any county, borough or place in Great Britain and Ireland, in any highway, street, or public place, to search any person whom he may have good cause to suspect of coming from any land where he shall have been unlawfully in search or pursuit of game, or any person aiding or abetting such person, and [of] having in his possession any game unlawfully obtained, or any gun, part of gun, or nets or engines used for the killing or taking game, and also to stop and search any cart or other conveyance in or upon which such constable or peace officer shall have good cause to suspect that any such game or any such article or thing is being carried by any such person; and should there be found any game or any such article or thing as aforesaid upon such person, cart, or other conveyance, to seize and detain such game, article or thing; and such constable or peace officer shall in such case apply to some justice of the peace for a summons, citing such person to appear before two justices, etc., as far as regards England and Ireland, and before a sheriff or any two justices of the peace in Scotland; and if such person shall [be found to] have obtained such game by unlawfully going on any land in search or pursuit of game, or [to] have used any such article or thing as aforesaid for unlawfully killing or taking game or shall [be found to]

have been accessory thereto, etc.; penalty on conviction not exceeding £5, with forfeiture of game, guns, parts of guns, nets and engines, which the justices shall direct to be destroyed or sold for the benefit of the treasurer of that particular county or borough. In case of dismissal of the summons, the game or guns, etc., found on the person summoned are to be returned, or the value thereof paid to them.

Sections 3, 4, 5, and 6 deal only with the recovery of penalties and the methods of procedure.

We doubt whether this Act would ever have been passed had it not been for the numerous affrays which were so constantly reported in the press some fifty years ago. At that time the shoulder-gun saw new developments, and game preservation assumed a more organised form. Village loafers, who had hitherto picked up a promiscuous rabbit without much hindrance, found the vigilance of gamekeepers and watchers a nuisance and annoyance to them, and tempted as they were by the overstocked preserves, they banded themselves together into gangs and defied the law, which the jealousy of a non-sporting public had caused to be laid down in a very restricted manner.

Constables had really no power to interfere until a breach of the peace occurred. As for an appeal to him to assist in the apprehension of a poacher, it was, until 1862, more than his place was worth, and his appearance in Court in any game case was generally looked upon with great disapproval. But the Poaching Prevention Act remedied this evil, and appealed directly to the police for the protection of game.

By its aid the country police are now of great

assistance to gamekeepers, where formerly they were more or less a hindrance, and the zealous officer, ever eager to obtain a conviction to his credit, requires little stimulus to scent any probable poaching expedition, should he have the luck to fall in the way of it when returning homewards in the early hours. Moreover, the recent transfer (mentioned in a later chapter) from the Excise officers to the police of the duty of investigating cases of neglect to take out game and gun licences, has furnished an additional reason for the country constable to put in force the provisions of the Act.

The power to search any suspected person, and to stop and search any cart, is a mighty weapon in their hands, and accounts for hundreds of cases we should otherwise have heard nothing of; because when game is found on the suspects, the onus of accounting for its lawful possession falls upon their shoulders, and does not rest with the prosecution.

It will be seen that the definition of "game" in the Act is a very wide one, including as it does rabbits and the eggs of game and woodcocks and snipe, but naturally the bulk of the cases one sees before the Court are those where rabbits, pheasants, or partridges, or in the summer the eggs of either of the two latter, are the booty seized.

A brief explanation of the Act may well be made in a series of propositions.

1. The search may be made by day or night.

2. Speaking generally, constables may exercise their power, either in the county, borough, or other police district to which they are attached, or in any adjoining police district.

3. The constable must have "good cause to suspect," either from the suspicious movements of the person searched or "from information received." The magistrates must decide as to whether there was good cause. In the absence of good cause for suspicion, the person whom the constable is attempting to search may lawfully resist, and probably would be justified in knocking the officer over if there was no other way of avoiding the search. On the other hand, if "good cause" does exist, the person who resists a search is liable for the additional offence of assaulting a constable in the execution of his duty.

4. The power to stop and search may be exercised in any highway or public place, whether contiguous to the place where the person is suspected of having been poaching or not.

5. The game, or gun, net, etc., must be "discovered" on the person searched, or in the cart or vehicle whilst the person or cart, etc., is on the highway, and such game, or some of it, or the gun, net, etc., or some part of it, must be seized then and there, or after an immediate pursuit. In other words, the game or gun, etc., must be "seen, heard, or felt" by the constable whilst it is on the highway, and it must be actually seized whilst on the accused person, or in the cart, or at the moment of his throwing it away. This, it is submitted, is the rule to be derived from the following cases: Clarke v. Crowder (1869), Turner v. Morgan (1875), and Lloyd v. Lloyd (1885).

6. As a rider to the last proposition, if the suspected person escapes before the constable has discovered anything, and afterwards throws away the game,

gun, etc., or takes it to his house, a subsequent discovery will not be sufficient to warrant a summons under this Act (see Clarke v. Crowder).

7. There is no power to detain the man after the articles have been seized; if he gives a false name and address there is no penalty.

8. If the constable finds any game, gun, etc., it is his duty to apply for a summons, and only he can do so. If he does not know the man's name or address he may be described as a person unknown. Unless the constable does actually proceed to take out a summons under the Act, he runs the risk of having an action for damages brought against him by the person who has been stopped and from whom any game, gun, etc., has been taken. He cannot justify the seizure except under the Act. If he prosecutes the man under the Act and fails to get a conviction, he runs no risk if he has acted *bonâ fide*, and the only satisfaction the man whose goods have been seized gets, is having the things returned, or their value paid. Even if it is eggs that have been seized, and owing to delay in hearing the case they have lost their value for setting, it makes no difference. No compensation can be claimed if the case is dismissed. If, however, instead of proceeding under the Act, the policeman takes proceedings or leaves someone else to take proceedings under one of the other Acts for trespassing in pursuit of game, night poaching, or for having game eggs unlawfully taken, then he becomes as it is called a trespasser *ab initio*, and being unable to justify the seizure, he must, if an action is brought against him, be condemned in damages (Stowe v. Bluestead, 1909).

9. To ensure a conviction, the magistrates must be

satisfied that the accused has been trespassing in pursuit, or aiding someone else; but direct evidence on this point is not necessary, and in the absence of satisfactory explanation by the accused, a conviction is pretty sure to follow the seizure of game, and even the seizure of a gun or net alone, if the circumstances are suspicious, may often be enough. In other words, it is *not* necessary to prove that game has actually been killed or taken; it is sufficient if the magistrates are satisfied that the gun, net, etc., was carried or used with the intention of killing or taking (Jenkin v. King, 1872).

10. These proceedings are cumulative on any that may be taken by the owner of the shooting for day or night poaching.

If this Act be compared with the Night Poaching Act, 1828, it will be seen that a constable may get a conviction where a gamekeeper could not. Under the latter Act, it will be remembered, it is no offence to set nets for rabbits on land at night, unless rabbits are actually caught, and therefore if poachers are disturbed by the keeper before they have caught anything they cannot be convicted. If, however, they are subsequently seen on the highway by a constable, and there searched, and the nets found on them, a conviction must follow from the joint evidence of the keeper and policeman.

Another advantage of the policeman's power is that there is no necessity to allege on what particular land the accused has been poaching, whilst, if the poacher were seen on the highway by a keeper, the latter must specify the particular land on which the game is alleged to have been taken.

It does not seem to have been decided as to what is

included in the word "land." The accused must be suspected to have come from some "land." We believe the Act does not extend to actual poaching on the highway itself, though we never knew of a case in which a poacher had the temerity to set up as a defence that he was not taking game on anyone's land, but on the highway.

CHAPTER XIV

EGGING



SECTION 24 of the Game Act of 1831 is as follows: "That if any person not having the right of killing the game upon any land, nor having permission from the person having such right, shall wilfully take out of the nest or destroy in the nest upon any such land, the eggs of any bird of game, or of any swan, wild duck, teal, or widgeon, or shall knowingly have in his house, shop, possession, or control, any such eggs so taken, any such person shall, on conviction thereof, before two justices of the peace, forfeit and pay for every egg so taken, or destroyed, or so found in his house, shop, possession, or control, such sum of money, not exceeding five shillings, as to the said justices shall seem meet, together with the costs of the conviction."

To aid the discovery of offences against this section, the Poaching Prevention Act, 1862, to which reference was made in a former chapter, authorises a constable

to search on the highway anyone he suspects of having game eggs that have been unlawfully taken, the latter Act, be it noted, is limited to the eggs of pheasants, partridges, grouse and black or moor game.

The necessity for a special provision imposing a penalty for the taking of eggs of game and wild fowl is founded on the principle of law that the eggs of wild birds, like the birds themselves, are not the subject of larceny, in other words cannot be stolen. To establish a theft of any article it is necessary to prove that the article was taken out of the possession (*i.e.* the legal control) of someone. Now, wild birds at liberty are not deemed to be in the possession of anyone, and the same principle has been applied to their eggs. Thus, though a man may be prosecuted for stealing hen's eggs out of a nest, he cannot be so for stealing pheasants' or any wild birds' eggs out of the nest.

If, however, the eggs are collected from the nests by a gamekeeper, for instance, they become at once, as the law terms it, "reduced into the possession" of the gamekeeper's employer, and any subsequent unlawful taking of them may be prosecuted as larceny. The great Elsenham Game Egg Case (Rex v. Stride), a full report of which is to be found in the appendix, was carried to the Court for Crown Cases Reserved, on the technical point whether in an indictment for stealing game eggs it is necessary to specifically allege that they have been reduced into possession, and also whether it is in all cases necessary to give direct evidence that they had been collected from the nests prior to being unlawfully taken by the accused person; and the Court held first that it was unnecessary to say

in so many words in the indictment that the eggs had been previously reduced into possession; and secondly that where the subject of the charge was a large quantity of eggs taken at one time (as in that particular case), which it would be absurd or unreasonable to suppose the accused person could collect from the nests all at once, the jury would be justified in finding that the eggs had been previously collected, *i.e.* reduced into possession, without proof that the identical eggs taken by the accused were taken from the store of those which in the ordinary course were daily collected from the nests for setting.

The section of the Game Act above set out is plain and simple enough without need for comment, but in practice the law is often administered by magistrates in so harsh a manner that many a man is converted from a first offender into a hardened criminal—or, at least, into a confirmed poacher—all for the want of a little foresight and impartial consideration.

Why it is that game (especially egging) cases should be, as it were, singled out by some Benches as the most awful and wicked of all crimes, it is difficult to understand; yet when a wretched labourer, with perhaps a delicate wife and half-a-dozen children to support on a weekly income of twelve or thirteen shillings, is put into the dock for having appropriated a few wild duck's eggs, which he probably took in all innocence and ignorance of the offence, and meaning to give his little ones at home a treat, he is sometimes fined 5s. an egg, with another ten or fifteen for costs. If he is unable to raise the money at once, he is marched off to jail for a month or more's imprisonment. A sad

result: when the breadwinner is gone, the home has to be sold, and the workhouse is the only refuge for the poor wretches whose only crime was the following of the simple dictates of nature. It is just the same with any of the other eggs mentioned above, if they are picked up by some luckless wight. Far be it from us to condemn the present law; in theory it is a most just and lenient one. Exception is only taken to the way it is sometimes administered by magistrates who impose on first offenders the extreme penalty which ought to be reserved for the incorrigible poacher.

So far as any defence is concerned, it is a known fact amongst solicitors that it is almost useless to attempt to defend an egging case. Such a line of action seems to provoke the magistrates to ferret out some way by which the burden of the fine, or at least the costs, can be increased. At the same time, we see the uselessness of discussing complaints unless we can suggest a remedy, or at least an amendment of the present state of things. It may be considered presumptuous to make suggestions to the legal luminaries as to what they ought to do, but we venture to submit it as an established fact that their decisions in game cases are celebrated for their severity, and we further submit that, if they would only extend to these offenders the same clemency and consideration that they show towards others, it would benefit all concerned, both in the present and in the future.

Let us take a case, not an imaginary one, but one which is distinctly characteristic of this offence. Before a fairly representative bench of magistrates at——, in Norfolk, one A. B. was summoned for that a constable of the said county there being, etc., in a certain highway,

on the 30th day of April, ——, and having had good cause to suspect that the said A. B. was then and there coming from land whereon he had been unlawfully in search of game, and that the said A. B. then and there had in his possession certain game, which had been unlawfully obtained, and therefore, etc., he, the said constable, etc., did then and there search the said A. B., and there find, etc., certain game, to wit, four pheasant's eggs, and did thereupon seize and detain the same, etc.

The constable stepped into the witness-box and stated that on the morning in question he met defendant on the highroad, driving along in his pony-cart. As he looked peculiar about the face, he stopped him and told him he had cause to suspect that he had game eggs in his possession, whereupon defendant replied that he had picked up four pheasant's eggs from the side of the road, and he gave them up. That was all he knew about the case. Upon this evidence the magistrates were eager and ready to inflict the fullest penalty of the law without further inquiry or explanation; but the defendant had taken advice. He had consulted a solicitor who was well versed in game and the game laws, and although he had been advised of the utter uselessness of attempting to defend the case, he had insisted upon being legally represented. In cross-examination the constable threw further light upon the means employed to obtain a conviction. "The peculiar smile on defendant's face was the only reason he had for suspecting him. It was not usual for him to stop every dealer's pony-cart he met on the highroad. He had not seen defendant leave, stop, or get down from his cart. He met him suddenly as he (the defendant) came round a corner.

He had not made an arrangement with any gamekeeper or watcher to be where he was, or to stop defendant, or anyone else. He had heard a gun fire quite close to him. He did not know who fired it. He knew what it meant. It was a signal to him. He knew by it that defendant had pheasants' eggs in his possession. He suspected he had four, and he was pretty certain he knew where they came from. The peculiar smile might have been imagined by him, as he stopped the man because of the signal. He was rather surprised that it was A.B., as he had suspected to see someone else whom he was on the look-out for. He did not know who made the pheasant's nest on the bank, but he did not do it. He knew it was there, and that there were four eggs in it. He had been in waiting where he was for some time that morning."

The magistrates said they did not want to hear further evidence for the prosecution, but, as defendant's solicitor expressed a strong desire to cross-examine the gamekeeper, who was in attendance as a witness, they very reluctantly consented to his being sworn, and he was asked by the inspector of police, who was conducting the prosecution, whether he had lost any of his eggs. He replied, "Four from a nest on the side of the main road."

The cross-examination elicited the following:—"He had found the nest on the morning the eggs were taken. It was in a very exposed place indeed, and contained four eggs. The eggs were uncovered, and anyone passing along the road walking or driving could not very well help seeing them. It was on the side of the main road, and not on a by-road or lane. The nest was

only a scrab, and placed half-way up the bank. He had no gun out with him. He had no other keeper or watcher with him who had a gun. He did not hear a gun fired that morning. He was near by when the eggs were taken, and saw A. B. driving along the road. He saw him stop and take the eggs. He had been watching the nest all the morning. He had made no arrangements with the constable, the last witness, to stop or catch anybody, nor had they any code of signals. He had not made the nest nor placed the eggs there, nor told the constable it was there. A pheasant had made it, and nothing else; but it was a most unusual place for a bird to select. If a gun had been fired, he must have heard it, and he knew of no reason why a gun should be fired. No trap had been laid to catch defendant, or prepared by placing these four eggs in an artificial nest, by himself or anyone else, to his knowledge. He was watching, as he expected to catch someone else."

Note the discrepancies and the contradictory nature of part of the cross-examination of these two witnesses.

The real prosecutor (also a magistrate) sat upon a chair adjoining the bench, and although he took no part in the proceedings, his sitting where he did might have been sufficient to have upset the conviction.

No defence was made. At the initiation of the proceedings, the defendant's solicitor intimated to the magistrate' clerk that he should plead guilty, and deliver his client over to their mercy and consideration. Now he pleaded, by way of justication of the offence, that a trap had been set, and temptation had been placed in the way in such a manner that the magistrates should not encourage it more than common justice demanded.

Offences were common enough without their number being added to by over-zealous keepers and constables putting their heads together to lure the unfortunates who passed through their beat to their destruction in such a barefaced manner as in the present instance, which he regretted to say was now almost an everyday occurrence. In the face of that part of the evidence, which was so contradictory, and having heard that the keeper had watched this nest all the morning, that the constable had been concealed round the bend of the road, and taking into consideration the situation of the nest, and the circumstances of the case upon the evidence, could they do otherwise than believe that a deliberate trap had been laid in the most tempting manner possible? If so, it was not for them to encourage crime. Such a course was contrary to the spirit of the criminal law; it was contrary to the spirit of the commonest principles of justice; and it was contrary to the tenets of the religion which we daily profess. In the present case the defendant confessed to his fault. He had been tempted, and he had taken the eggs. Before he had decided what to do with them he was pounced upon. Who, passing along that road and seeing what he saw, would not have been similarly tempted and have fallen? No matter if they really meant to carry the eggs to the keeper's cottage, or to a place of safety, it would have been the same. The offence would have been committed, and the offender would have been open to fine. In the present case the offender was really sorry, and would not, he guaranteed, offend again if leniently dealt with, and a nominal fine per egg only inflicted, as the costs must necessarily

follow, and they would be quite heavy enough to impress upon his memory that eggs were to be avoided in the future.

The magistrates retired for a few moments, and then addressed defendant (who had not uttered a word, and who was apparently a very respectable man) in a most heated and excitable manner, abusing him violently, and inflicting upon him the very heaviest penalty their clerk advised them they could inflict. Besides this, they made further orders, which the solicitor for the defence respectfully submitted they had no power to do, although his client was quite willing to comply therewith.

Now, had the bench inflicted a fine of sixpence, or even a shilling, per egg, the defendant would have felt grateful to them, and a few sensible and conciliatory words of sound advice would have gone home into his mind and prevented the probability of future offences of a like nature. As it was, he left the court-house with bitter hatred rankling in his mind, vowing to be even with the game-preservers seated on the bench at the first opportunity which offered.

Such a case as this is common, and the results of these decisions are nearly always the same. Magistrates would do well to bear in mind the saying of Montesquieu (translated from the French)—"There is no crueller tyranny than that which is perpetrated under the shield of Law and in the name of Justice."

CHAPTER XV

JURISDICTION OF JUSTICES



THIS sub-heading is one which requires most careful consideration. The "claim of right," as it is sometimes called, is a cloak under cover of which many a born poacher shelters himself, in not a few cases to his advantage. The objection should be taken at the commencement of the proceedings, and the justices have jurisdiction to decide upon the reasonableness and upon the sufficiency of the objector's evidence which he intends calling in support of his contention. Should the justices be of opinion that a *bonâ fide* claim is set up, and that the alleged offender or offenders have entered upon the land in question under that right, then their jurisdiction is ousted, and the complainant and defendant must settle their

differences by recourse to the common law remedy, which is so expensive and tardy of movement that many a one prefers to take the law into his own hands rather than to indulge in such extravagant procedure. Knowing this, the wily lawyer raises the point if he can; the more so when he has perhaps good reason to believe that his client would be convicted if summarily dealt with, whilst he trusts to the wearisome monotony of the law's delay and the expense entailed (without a shadow of a probability of the complainant recovering one iota of the fees imbursed from the defendant, who is, in the generality of cases, merely a man of straw), to act as a lever for him by which he may arrange an amicable settlement of the case to his client's advantage.

This course of action may seem to many an unfair advantage to take, but the lawyer fighting for his client's liberty clutches at straws, and struggles hard indeed before he is overcome. It is these wiles that we would unveil, and thus make clear the course to steer in order that others may avoid the hidden shoals and sunken rocks which are found everywhere in the channels of litigation.

The number of cases cited in which this question has been fought out is really astonishing, and many of them are interesting as well as instructive. In Watkins v. Smith (1878), the defendant set up a *bona fide* claim under a lease to enter land which he had used at will for several years, but upon searching inquiry it was found he had been mistaken in his claim, as that particular land was not included in his lease, and it was also found that there was a mistake in one of the plans produced. The result was that the defendant's

contention could not be proved to be sufficient to oust the jurisdiction of the justices.

In another case in the same year (Regina v. Critchlow, 1878), the defence was raised that leave had been given by the occupier of the land, who held under a parol agreement. In evidence, the occupier denied the reservation of the game on his land to the landlord, but the landlord produced evidence to prove that in reality it was reserved, and that defendant was cognisant of the fact that the landlord's shooting tenant was accustomed to shoot the game, and that he (defendant) had accepted presents of game from such shooting tenant. It was held in the end that the defence was not *bona fide*, and the jurisdiction of the justices was not ousted.

It is an ordinary rule of common law that there must be what by law is called "a *mens rea*" to constitute an offence; in other words, a person must know he is doing wrong before he can be said to be committing any criminal offence at common law. Of course, everyone is presumed by a convenient fiction to know what the law is, and it is no defence to say that one was unaware of the provisions of any particular statute. All the same, in most cases which come before the justices of a criminal or a semi-criminal nature, the existence of a right *bona fide* set up is an absolute answer to the charge, so far as the jurisdiction of the justices is concerned. Under some statutes, however, notably under such modern Acts as the "Adulteration of Foods and Drugs Acts," the knowledge or belief of the defendant is immaterial, and this is so with regard to trespassers in pursuit of game. It is no answer to a civil action of trespass at common law to say that the

defendant did not know he was trespassing. He is presumed to know where his own land ends and that of his neighbour's begins, and he is also presumed to know what are the boundaries of the public roads that he uses, and what his rights over those roads are.

In the same way, when we come to the criminal or semi-criminal offence of trespass in pursuit of game, the ignorance of the defendant that he is on someone else's land, or that he is off the highway or public road, or that he is using the highway in a manner not justified by law, is no defence. On this ground the conviction of the defendant in the case of Watkins v. Smith, before referred to, is fully justified. The defendant there may have had a *bona fide* belief that he had a right of shooting on the land in question, but as there was no foundation in fact for such belief he was rightly convicted. Several cases subsequently referred to show that, in the same way, a mistake in *law* will not avail the defendant.

The plea of a claim of right to which we have referred is constantly set up when a person is prosecuted for trespass in pursuit of game on common lands. It is often thought by some of the lower classes that commons are public property as far as the sporting rights are concerned, and claims of right are sometimes ignorantly set up, not by the ingenuity of the lawyer, but in the *bonâ fide* belief that every one of the public has a right to take game on common land. This, of course, is a perfectly fallacious idea, and as we have before seen, not only have the public no rights, but even the commoners themselves, as a general rule, have no title to the game in respect of their right of common.

If all the reported cases on the question of claims of

right ousting the jurisdiction of the justices are read, there will appear to be considerable inconsistency in the decisions, but there is one case which may be said pre-eminently to lay down the law on this matter in a definite and final manner. The only difficulty is to apply the principles of the case in question to particular facts. The case we are referring to (which also illustrates the futility of a claim of right to shoot on commons) is that of Watkins v. Major (1875). This was a test case, practically instituted by a solicitor, a Mr. Watkins, who had taken a long lease of a close of land adjoining a common, and there built a house. He claimed to be in respect of his land a commoner, and as such, to have the right to shoot on the common, and in order to test his right he sent his son, a boy of thirteen, to shoot a rabbit on the common, which the latter did, and was promptly prosecuted by the respondent on behalf of the lord of the manor.

It appeared at the hearing that in the lease to Mr. Watkins there was no mention of rights of common or of sporting rights over the common, but that Mr. Watkins had, before the alleged offence was committed, been in correspondence with the solicitors to the lord of the manor, and had claimed the right which he now sought to set up. The justices convicted the boy, but stated a case for the opinion of the High Court. Other questions were raised in the case, but the main point was the claim set up by Mr. Watkins on his son's behalf—a sufficient *bonâ fide* claim of right to oust the jurisdiction of the justices. The Court, after taking nearly a month to consider its decision, decided that it was not sufficient, and that the conviction must stand.



"To test his right he sent his son, a boy of thirteen, to shoot a rabbit on the common."—p. 206.

sets up the claim of right must show ground for this assertion. This, in fact, was decided in the cases last referred to. In all of them the rights were claimed, but they cannot by law exist. We are of opinion that these principles and decisions are applicable to the present case, and that the magistrates might not improperly have found that the claim set up, although in one sense *bonâ fide*, was not a fair and reasonable claim of right, and, therefore, that they were not bound to stop.

"Even if such a right as that set up could by law exist, the claim made was so vague and improbable that in the absence of all the evidence to support either, that or some other right on the part of the appellant to shoot rabbits on the common, the justices were entitled to disregard the claim of right set up, and to convict the appellant."

It thus appears that in all cases in which a claim of right is set up, what the justices have to decide is not only is the claim an honest one, but is it one which could, if the defendant's contention were correct, be good at law, and had the defendant reasonable ground for believing it? Was the belief in the alleged right an honest one and was it reasonable, having regard to the facts within the defendant's knowledge, and assuming him to know the law?

This is, it will be seen, a question, or we might say, two questions of fact, and they are for the justices themselves to decide.

If both questions are answered in the affirmative, the defendant can claim an acquittal; if either is in the negative, he has failed to oust the jurisdiction of the justices.

The following cases decided since Watkins v. Major may be cited as examples.

In Penwarden v. Palmer (1894), the facts were that a tenant farmer had occupied his holding for upwards of twenty years, and during that period he had always enjoyed the unhindered right to shoot and kill rabbits. One day he authorised his son to shoot the rabbits, but the latter was stopped by the gamekeeper of the person to whom the sporting rights of the manor had been granted, prosecuted and convicted. In face of evidence to prove a manorial right to shoot rabbits, the Court held that a *bona fide* claim to title arose sufficient to quash the conviction. The Ground Game Act would of course have been a sufficient defence for the farmer himself, but his son had not been duly authorized in writing so as to be able to plead that Act.

In the case of right to sport along a public way, it matters not whether the land in question be a footpath, lane, or main road. The chief points are, in whom is the ownership of the soil vested, and for what purpose was the way being used? In Philpot v. Bugler (1890) a dispute arose as to the title of the person alleged to be in the occupation of the land. B., with his dog and gun, proceeded along a public footpath which ran through a field, the property of P., adjoining B.'s coverts and parallel with the latter's own hedge, whilst he sent a beater into his own fields to drive out what game there might be across the hedge. Upon a complaint arising, A. set up a claim of right, saying his intention was simply to shoot his own game, and the magistrates dismissed the summons. In the High Court to which the case was taken, it was decided that the justices were

wrong in deciding in favour of the defendant, because no title to property was involved, and A. should have been convicted. Mr. Justice Grantham said the defendant had a right-of-way over the path, but he was not there for the purpose of walking over it; he was there for the purpose of sporting.

The case of Mann v. Nurse (1901), shows how a slight alteration of the facts may influence the decision.

The defendant, who was the owner of a house in Holt, Norfolk, held as appurtenant to the house one "going" on a common, *i.e.*, the right to depasture thereon one horse or beast. The common had been allotted under an Enclosure Award to the rector, churchwardens and others upon trust to provide pasture for one head of neat stock or one horse for each of the owners of certain ancient houses. The defendant who was prosecuted for trespassing in pursuit on this land called a witness who was the owner of another of the ancient houses mentioned, and who gave evidence that he with different people had openly shot on the land for 27 or 28 years.

The Divisional Court, whilst expressing the opinion that the defendant had no right of shooting on the land, yet held that there was a sufficient *bona fide* claim of right to oust the justices' jurisdiction. The sole point on which this case can be distinguished from that of Watkins v. Major, is that the evidence of the witness who had openly shot on the land for many years without dispute furnished some ground for suggesting that there might be a right vested in the owners of the ancient houses which was not apparent from the Enclosure Award.

CHAPTER XVI

IS GAME THE SUBJECT OF LARCENY?

TRESPASS IN PURSUIT, OR LARCENY?

AN INTERVIEW



"Ah! good morning, Mr. Broadacres!"

"Good morning, Mr. Six-and-Eight; and how do you find this weather suit you?"

"Remarkably well, I thank you; and trust you do the same.

"But this is an unexpected pleasure, Mr. Broadacres," we add, as we beam upon him over our pince-nez,

unconsciously rubbing our hands together the while, as is sometimes customary with members of the legal profession.

"Well, you see," says the very-much-landed squire, in almost an apologetic manner," you have been so successful in defending those rascally scoundrels who trespass upon my preserves, that I thought I would steal a march upon them this time by endeavouring to persuade you to represent my interests, and be retained by me for the prosecution."

"It is very kind of you to say so," we remark, adding slyly: "The fraternity you refer to in such uncomplimentary terms (not that I for one moment suggest that those terms are misused or unmerited) offer me—nay, they go even further, and press upon me—such exceptionally liberal fees that in these times of depression and competition I really cannot afford to refuse their business."

"Which I can quite understand," replies Mr. Broadacres; "and it only makes me the more eager to retain your services. I trust, therefore, you will charge me accordingly, and I shall not grumble if you increase the fee you would otherwise receive from them by half as much again."

We bow our thanks to Mr. Broadacres, and arranging our pens and papers, prepare to listen to his case, taking notes of any point of importance that may strike us during the recital.

"Having most satisfactorily settled these preliminaries, I will now proceed to business," he says, and settling himself comfortably in the easy-chair which we thoughtfully provide for our best clients, he takes out a pocket-book

and thus delivers himself: "Last evening my keeper, Sharpsite, who is not altogether unknown to you, Mr. Six-and-Eight, came to the Manor House and stated to me he had strong evidence against a man named Kelly."

"So they have caught Mike this time, have they?" we thought to ourselves, but refrained from giving utterance to what was passing in our mind.

"It appears that one of my day watchers, named Peter Hawk, observed this man Kelly, accompanied by another man whom he did not know, taking rabbits from some snares on the common."

"The common?" we repeat, stopping him. "I don't think I know exactly where that is; and if it is common land it may have an important bearing on the case."

"Oh, no; that makes no difference to this case. It is a large, poor, light-landed inclosure which has been allowed to go out of cultivation, except for broom and furze bushes. We call it the common, as it is the most appropriate name we can give it. Kelly had not been seen setting the snares, and, as there were two of them, Hawk thought it wisest to retire without showing himself. Fortunately, he found Sharpsite at home, and when they returned to the common the man Kelly and the other poacher were still taking rabbits from the snares. When Sharpsite and Hawk tried to creep to close quarters, Kelly's dog spotted them and gave a warning growl, whereupon both of the men made off, leaving their spoils behind them. Sharpsite tells me he found fifteen dead rabbits, fourteen of which were hurdled and tied up with a piece of box cord, and concealed under some furze bushes. As the moon was about full they

determined to watch. A little after 10 p.m. they posted themselves, with two other watchers, at different parts of the common. After waiting three hours, they saw two ghostly forms creeping through the furze bushes and take away the rabbits with them. Sharpsite and Hawk followed, and came up just in time to see both the scoundrels collared by some of my other watchers as they were creeping through a hole in the fence. There was another man waiting with a horse and cart in the roadway, but he drove off before he was recognised."

"Mr. Robert Pickemup," thought we to ourselves.

"The two men caught," continued our client, "were the man Kelly and the other, I hear, is named J. Green. Both, I believe, live at or somewhere near to Deadham."

"Now, can I prosecute them—firstly, for trespassing in the daytime in pursuit of game; and secondly, for stealing fifteen of my rabbits?"

"I think it will be better for both of us, Mr. Broadacres, if we take your questions separately. With regard to the first, you have a clear case against the man Kelly, and there is no doubt about it at all; but unless you can identify the man who you say was in company with Kelly when they were seen in the daytime, I fail to see how you can convict, or even apprehend him. He may not have been the man Green, who you say was caught at night with Kelly. With regard to the second of your questions, there is a very grave doubt, and I think I can advise you off-hand that such a prosecution would not be upheld. But, in order to refresh my memory, I will refer to 'Oke,'" and taking down the volume mentioned, we turn to the chapter on "The Law of Property in Game."

"I have told you all the facts I know," said Mr. Broadacres, "and now I'll listen to what you have got to say on them."

"'It has been established by many early decisions,'" we begin, "'that a trespasser killing an animal *ferœ naturæ* (which includes a rabbit), and carrying it away, is not guilty of larceny. But this rule appears to apply only when the taking and the carrying of it away are one and the same act, or a continuous transaction.'"

"Which was not the case here," adds Mr. Broadacres.

"Pardon me," we reply; "the case of Reg. v. Townley, (1871), seems to be a case on all fours with your own. There the prisoner, with other poachers, wrongfully killed a number of rabbits on land belonging to the Crown. They placed the rabbits in a ditch on the same land—some in bags, some strapped together. They had no intention to abandon the wrongful possession of the rabbits which they had acquired by taking them, but placed them in a ditch as a place of deposit until they could be conveniently removed. About three hours after depositing the rabbits they came back and began to remove them. The prisoner was convicted, and the point was reserved for the consideration of the Court for Crown Cases Reserved, as to whether the above facts amounted to larceny of the rabbits. The Court held it was not larceny, the taking and removing being one continuous act."

"Well, all I can say is," remarked Squire Broadacres, "I'm very disappointed. I had hoped to make an example of these two scamps, and now to be told I can only summons them for being on my land in the daytime in pursuit of game and not for stealing it, is, I think,

under the circumstances I have mentioned, very exasperating. It's most unjust towards game preservers. But I suppose I must put up with it. In any event, Mr. Six-and-Eight, please take the necessary proceedings, and do all you can to get the maximum punishment enforced."

"Ah, that is hardly likely. The bench, as you know, may take a lenient view of the case. About a sovereign fine, with costs, is perhaps the most you can expect."

A week after the interview described we were walking towards the Petty Sessional Court-house in company with our client, whilst his keeper and game-watchers followed at a respectful distance.

At the doors of the Court the usual motley crowd were collected, and no little interest was centred in the case, possibly because of the fact that Mr. Six-and-Eight was engaged for the prosecution instead of the defence. Upon entering it was evident the defendants were uneasy, and apprehensive of the result. They had gone to the expense of counsel for their defence, and had subpœnaed a goodly array of witnesses, who were now receiving their final instructions from their solicitor, Mr. Gimblet, an ex-lawyer's clerk of no very high repute. When Squire Broadacres entered the whispering ceased, and several spectators from the back left the hall hurriedly, as though they had no wish to be seen there by him.

Punctually at 11 a.m. the five magistrates who were to sit that morning filed into Court; having bowed to those present, they took their seats in solemn silence. The magistrates' clerk produced the charge sheet, and the case of Broadacres against Kelly was called on, it being the first on the list.

Mr. Six-and-Eight contented himself by informing the bench that the facts were so clear and simple that no speech was required from him, and he would leave the witnesses to unfold the facts in their own language. This was soon done, and the story with which the reader is already acquainted was once more told, with the exaggerations which are usual. It looked on the face of the evidence an unanswerable case.

Counsel for the defence was a very young junior, named Mr. Softsap; he was the son of a local farmer, and this was his first case. The line taken by him in his cross-examination was one which Mr. Six-and-Eight at first could not exactly fathom. The questions were few, and they were put in a bland and mild manner. The witnesses readily answered them in a way that was evidently most satisfactory to the questioner.

"Did you see the defendant Kelly setting the snares on the common on the day in question?"—"No."

"Did you find any snares on him when he was caught?"—"No."

"Do you know who set the snares?"—"No."

"Will you declare on oath you saw the defendant Kelly kill a rabbit"?—"Well, no; I can't exactly swear to that."

"Did you see a rabbit struggling in his hand? Remember, you are on oath."—"Not exactly struggling; you see, we were some way off."

"I thought so. Now I will go a step further. Did you see Kelly beating the common with his dog?"—"No, sir; I tell you they were busy all the time we watched them taking rabbits out of their snares."

"*Their* snares! Why, you said just now you never saw them set any snares?"—Well, how should they

know they were set if they did not set them?" the witness replied.

"Ah, ha!" chuckled the learned counsel, "we are coming to that. Now, Mr.—what's the witness's name? Oh yes—Sharpsite, do you remember seeing some gipsies encamped on the waste land near the 'Dog and Gun' Inn at Deadham about ten days ago?"—"Ye-e-e-s; but what of that?"

"That concerns me, not you. Now, did you ever see them on the common after blackberries?"—"I might have done."

"Do you remember if you did?"—"Well, yes, once."

The above is about the sum and substance of the cross-examination of each of the witnesses, who left the box with puzzled expressions.

When Mr. Six-and-Eight had closed his case, Mr. Softsap rose to address the Court for the defendants.

"He admitted that Kelly had been on the common on the day in question, and had taken the rabbits from the snares as had been stated, but, he argued, because he ran away from the man Sharpsite, that was no proof of his guilt; it suggested rather to his (the learned counsel's) mind that he (Kelly) was afraid of bodily chastisement at the hands of Sharpsite and his hireling —the man Hawk—for having dared to trespass on the sacred preserves of the prosecutor, who, it was well known, was almost fanatical upon the question of the preservation of game. He now proposed to prove conclusively, as he submitted, that the defendant Kelly was not the person who set the snares on the common, but a gipsy (name unknown) had set them, and that Kelly,

having seen a dead rabbit or two in them, thought he was as much entitled to them as anyone else. There was no evidence, he submitted, to prove that Kelly had been in pursuit of game. A man could not be charged with trespassing in pursuit of dead game; and none of the witnesses had seen Kelly kill any of the rabbits in question. Were the defendant Kelly allowed to give evidence, he would tell the bench that he found the rabbits dead in the snares, and being frightened by the man Hawk had run away.*

"He would admit that he had come back for the rabbits at night; but what did that amount to?—merely a common law trespass, without damage, which was outside the jurisdiction of that Court. He should produce witnesses to say they had seen a gipsy setting snares on the common, and that they had mentioned the fact in the parlour of the 'Dog and Gun,' which, with the evidence elicited by him (Mr. Softsap) in his cross-examination, would justify—nay, compel—their worships to dismiss the case now before them."

Two witnesses were called, who stated that they had been strolling round the common on the Sunday afternoon previously; whilst there they had seen a gipsy, whom they did not know, and were only able to identify by a sealskin cap tied on the top with strings, by his moleskin coat and scarlet comforter, setting snares. That they had casually mentioned the fact in the bar parlour of the "Dog and Gun," and they had no interest in the case one way or the other. Other witnesses were called to say that they heard the statement

* This case was heard and decided before the Criminal Evidence Act, 1898, had received the Royal Assent.

made as mentioned, and that Kelly was present at the time.

To the amazement of the crowd at the back of the Court, Mr. Six-and-Eight had no questions to ask any of the witnesses. In vain Squire Broadacres nudged his elbow, and showed by most unmistakable signs his disapproval of the omission, until the wily lawyer, who was well aware of what he was about, wrote on a slip of paper the words, "Have patience, and wait; your time is coming," which he tossed in a careless manner to his client, whilst his face once more assumed an outward look of consternation and bewilderment.

At the conclusion of the evidence, Mr. Softsap sat down with a most self-satisfied air, and the crowd behind him could not restrain themselves from an attempt at applause, which was instantly suppressed by the superintendent of police.

The magistrates now rose, and, attended by their clerk, retired to consider the case and their lunch at the same time. Mr. Gimblet was congratulating Mr. Softsap on his speech, whilst the much-injured Mike Kelly received the sympathies of his friends at the back of the Court.

Squire Broadacres looked very uneasy; he did not understand the note his legal adviser had indited to him —still less what was passing in that gentleman's mind. For some time he tapped his fingers restlessly upon the table; then he read and re-read the missive he had received, until he could contain himself no longer. He was on the point of consulting Mr. Six-and-Eight, when the return of the magistrates prevented him from so doing.

"We have carefully considered the evidence in this case," said the chairman of the bench, "and although it looks most suspicious against you, we have decided to give you the benefit of the doubt, and we hope your escape from the heavy fine we should otherwise have inflicted upon you will be a warning to you in future to be more careful in your actions. We dismiss the case."

Mr. Softsap, in a great state of elation, thanked the bench, who replied through their chairman that there was no occasion for such an expression from him, as they had simply a public duty to perform, which they had carried out.

Mr. Six-and-Eight smiled a knowing smile to himself, and beckoned to the superintendent of police, with whom he held a hurried consultation in a low tone. Squire Broadacres looked black as thunder, and bit his nails from sheer vexation. Sharpsite and Peter Hawk were muttering to themselves that the squire's lawyer had sold the case, as they felt sure he would, and that the squire ought never to have engaged such a d—d scamp. On the other hand, the friends of the defendant—in a decided majority—were most jubilant. When he appeared outside the Court he was greeted by cheer after cheer, and escorted like a hero to the pub. over the way, to partake of as many free drinks as he cared to accept.

The magistrates called on the next case, and thought no more of the matter. Judge of their surprise—judge of the astonishment on the faces of Messrs. Softsap and Gimblet; judge of the consternation of the jubilant crew who but a few moments ago had showered their congratulations upon the thought-to-be fortunate Mike Kelly —when that individual was brought back again to the

Court he had so hurriedly left, in the custody of a stalwart constable; and when he was charged by Mr. Six-and-Eight, upon the prosecution of Mr. Broadacres, "for that he, the said Michael Kelly, etc., did feloniously steal, take and carry away certain dead beasts—to wit, fifteen dead rabbits, of the price or value of 15s.—the property of Nathaniel Christopher Charles Willoughby Broadacres, Esquire, etc., contrary," etc.

The prisoner pleaded "Not guilty" in a dazed kind of way, and Mr. Six-and-Eight, having commented on the evidence given in the previous case—the prisoner's own statement through his learned counsel, Mr. Softsap—read the *dicta* in the cases of Reg. v. Townley and Reg. v. Smith (which have already been placed before the reader), and he pointed out to the bench that it was their manifest duty, upon these facts, to commit the prisoner for trial at the forthcoming assizes.

The witnesses in the previous case were then recalled, and repeated their evidence.

Mr. Softsap and his instructing solicitor were completely bowled over, and in defence had little, if anything, to say. The magistrates' clerk supported the contention raised by Mr. Six-and-Eight, and Kelly found himself fairly out of the frying-pan into the fire. The necessary bail not being forthcoming, he was led away, much to his chagrin, whilst the fame of our friend, the sporting lawyer, rose still higher, in spite of the unpopular nature of his success.

Mr. Six-and-Eight again Defeated.

In due course the assizes came round. (It was before the passing of the Assizes Relief Act, under which all

such cases now go to quarter sessions.) It must candidly be confessed it had never crossed Mr. Six-and-Eight's mind that there could possibly be any defence raised by the prisoner at the trial. He contented himself, as most criminal lawyers would under the circumstances, with setting out in his brief the depositions in the case, with a short account of the hearing of the previous charge for trespassing, and giving the brief to a young and somewhat inexperienced counsel, Mr. Newcald.

To the surprise of Mr. Six-and-Eight, the prisoner was represented by Mr. Spouter, one of the leading junior counsel on the circuit.

In due course, the grand jury found a true bill. The prisoner was called to the bar, and pleaded "Not guilty." Mr. Newcald, acting on instructions from Mr. Six-and-Eight and Mr. Broadacres, leaned over to the prisoner's counsel, Mr. Spouter, and whispered that if the prisoner would withdraw his plea and plead "Guilty," they would ask the judge to take into consideration the time the prisoner had been in gaol since his committal, and ask for a light sentence. Mr. Spouter cautiously replied:

"We'll see in due course."

The common jury having by this time been sworn, Mr. Newcald rose to open the case. He informed "my lud and gentlemen of the jury" that his case lay in a nutshell, and the evidence for the prosecution was so clear that he confessed he was surprised his learned friend who appeared for the prisoner had not advised his client to plead guilty, and throw himself on the mercy of the Court. The prisoner was admittedly caught in the very act of taking dead rabbits out of some snares on the land of the prosecutor, Mr. Broadacres.

"Pardon me," said Mr. Spouter, rising and glaring through his spectacles at Mr. Newcald, "we admit nothing."

"My friend very properly says, gentlemen," continued Mr. Newcald, "that he admits nothing. But, unfortunately for him and his client, he cannot get away from facts proved before the magistrates, and not there disputed."

Mr. Newcald then went on to inform the jury that the prisoner had been caught barefaced in the act of taking rabbits from snares on Mr. Broadacres' land. That he had been prosecuted by that gentleman before the magistrates for trespass in pursuit of game, and that that charge had been dismissed on a technical defence, which he proceeded to explain to the jury. He then narrated the facts, with which the reader is fully acquainted, and called as his first witness the watcher, Hawk.

The usher of the court called for Peter Hawk, and the police officers outside took up the cry, but before the echoes had ceased in the long stone corridors, that vigilant retainer of Squire Broadacres had taken his stand in the witness-box, and, testament in hand, was eager to kiss the book and get to business.

Mr. Newcald having elicited from him a corroboration of his opening statement, sat down and smiled pityingly upon Mr. Spouter (who rose to cross-examine), thinking what a miserable case his opponent had, whilst he contentedly pulled the few hairs he called a moustache (which vanity forbade him to sacrifice), and leaning easily back on the bench, he pictured in his mind's eye visions of the woolsack.



Mr. Spouter: "Pardon me . . . . . we admit nothing."—p. 224.

In reply to Mr. Spouter, Peter Hawk admitted the prisoner had made no statement before the magistrates "that he knowed of." All the talking was done by his lawyer, and a nice beauty he was. This sally of wit on the part of the witness caused considerable amusement at the back of the Court, which, in the usual journalistic phrase, was "instantly suppressed," and the witness was severely rebuked by the judge. Yes, he had seen the prisoner on the common earlier in the day in question; he was quite sure of that. Also that he (the prisoner) kept snares, and used them freely too, only he was too clever by half, or he would have been "nailed" before; but the cleverest gents usually were a bit too clever, and overreached themselves.

Yes, Mr Peter Hawk admitted that he occasionally used the "Dog and Gun" public-house, and had been there on the evening after the hearing before the magistrates. Then, with some hesitation, and in a puzzled manner, he reluctantly admitted that he had stated in the taproom that "this case was all a lot of humbug, as he knew very well that Mike (the prisoner) had set the snares himself and meant to get the rabbits out of them."

At this answer Mr. Newcald awakens from his ambitious reverie, and objects most vehemently to the unfairness of the question.

"I submit, my lud, that what the witness said is not evidence against the prisoner."

Mr. Spouter blandly explains he is at perfect liberty to test the veracity of the witness, although, upon the evidence given, he cannot doubt but that he is speaking the truth.

The judge remarks he cannot for the life of him see that the evidence is either for or against the prisoner, but he rules that Mr. Spouter is perfectly at liberty to put the question if he chooses to do so. The question was accordingly repeated, and elicited the answer given.

Peter Hawk, thinking that if he goes a little farther he will clinch matters once and for all, risks a voluntary addition to his statement—"And Jimmy Green taunted me afterwards in the bar the same night before everybody—"

In vain Mr. Newcald tried to stop the witness, whilst the artful and cunning Mr. Spouter drew up his features into a horrified expression, and said, "Please stop—never mind what Mr. Green said." But this, coupled with the look on his face, more than ever convinced the witness he was on the right tack, and he blurted out the rest of Green's taunt as quickly as he could:

"'You was mighty clever to get Mr. Six-and-Eight, you was; but we did set the snares arter all, although our lawyers told the magistrates we didn't.'"

As James Green was well known to almost every man in the Court, and the peculiar turning of the case had previously caused no little excitement, the jurymen made a mental note of the evidence, although the judge immediately told them to dismiss this part of it from their minds, and cautioned the witness that he must not repeat what was said to him by any other person unless the prisoner was present at the time the conversation took place. Mr. Spouter, quickly realising the advantage he was gaining, proceeded to lead his witness blandly with question after question, which Peter Hawk, thinking he had done the trick, readily answered. Had a more

experienced counsel been engaged for the prosecution, he would probably have become suspicious that something was in the wind, but Mr. Newcald was so wrapped up in his own ability and the unanswerable nature of his case, that he took no notice of the tactics of his opponent, and did not attempt to stop him. When Mr. Spouter had done with the witness he sat down, apparently more than satisfied with the answers he had obtained. If Mr. Six-and-Eight had been in Court he might have given a hint to his too-much-learned counsel, but that gentleman was, unfortunately for his client, called out on pressing business immediately after the opening of the case, and did not return until the judge's summing-up; and his articled clerk, Mr. Legalling, who, in his absence, represented him, was content to leave the whole responsibility of the case in his counsel's hands.

Mr. Sharpsite was the next witness called, and he went through his examination-in-chief most satisfactorily, but, like Peter Hawk, he seemed altogether puzzled by the cross-examination of Mr. Spouter, and before half a dozen questions had been asked was floundering hopelessly about in a sea of doubts and despair, whilst he vainly endeavoured to fathom the hidden meaning of the questioner, and thus clutch at a spar of support by which he could save his cause. He was, however, not quite so rash as Peter Hawk, and made no voluntary statements; at the same time he did not appreciate the attentions of prisoner's counsel, and he evidently experienced a feeling of secret dread that their case was in jeopardy. He (Sharpsite) admitted he had chased the prisoner off the common earlier in the day; that he had

seen him taking rabbits out of snares; that he had ascertained, since the hearing of the case before the magistrates, that prisoner had set the snares himself, and that they had not been set by the gipsies, as was at first suggested.

"How did he know this?" inquired the judge at once.

"He had see'd somebody who had see'd him" (meaning the prisoner) "set 'em."

"And the prisoner came back again later, I suppose, to fetch the rabbits away?" cunningly insinuated Mr. Spouter.

"O' course he did," replied the witness, before Mr. Newcald could stop him or protest against the question.

Again Mr. Newcald remonstrated at the grossly unfair questions put by counsel for the defence, whom, he asserted, had been called to the Bar long enough to know better.

At this Mr. Spouter smiled patronisingly upon him, saying that he really could not understand what had caused his learned friend to so suddenly lose his temper —a retort which fluttered Mr. Newcald more than ever, whilst the judge smiled, and the jury showed an unmistakable sympathy for the defence.

In re-examining his witnesses, Mr. Newcald did no good to his case. It was just beginning to dawn upon him that he had been outflanked, but, flustered and annoyed as he was, he could sufficiently clear his mind to see a straight course in front of him; yet the more he re-questioned his witnesses in an almost hopeless attempt to keep them to their original story, the

more he confused and muddled them up as well as himself.

At the close of the case for the prosecution Mr. Spouter announced his intention not to call witnesses for the defence, and Mr. Newcald consequently at once summed up. His summing-up, however, was weaker than his cross-examination. He reiterated his opening speech with no variation; he re-impressed upon the jury the fact that when before the magistrates the prisoner's counsel had denied most positively that prisoner had set the snares, or had had anything to do with them, whereas now the defence would apparently have them (the jury) believe that prisoner did set the snares—not that he (Mr. Newcald) could see that that fact made much difference to him, because, when the prisoner ran away in the afternoon, he abandoned the rabbits, and they accordingly became the property of Squire Broadacres, whoever killed them. The afterthought, the return at the dead of night, was a separate and a distinct act—an act of larceny at common law—and he felt convinced that they, his most intelligent and practical fellow-countrymen upon that jury, would agree with him, and come to the only opinion which their sound good sense could convince them of, namely, that the prisoner was guilty.

Mr. Spouter did not fail to take advantage of the superabundance of adulation which Mr. Newcald had poured into the ears of the jury, and in opening his defence caused considerable merriment by suggesting that his learned friend apparently wanted to wheedle the jury into a verdict of "Guilty" by "butter and soft soap," because he was clever enough (?) to perceive that

his case was hopelessly gone after the completion of the cross-examination of the first witness. But, he continued, they (the gentlemen of the jury) were not men of that stamp. They would give a verdict on the evidence before them as they conscientiously believed, and to be told of their intelligence, good sense, and such-like blarney was, to say the least of it, far from complimentary to them, and he (Mr. Spouter) well knew they would not be taken in by it. He then went on to state it was not his intention to call any witnesses; he should rely upon an acquittal upon the evidence of the witnesses for the prosecution. It was clear from all of them that prisoner had set the snares, and had every intention of returning to take the rabbits he had caught. He admitted that prisoner had no right to set them, and he further admitted that prisoner was trespassing in so doing; but then he did not stand charged before them with that offence, but with the offence of stealing fifteen dead rabbits. When before the magistrates, unfortunately for the prosecution, they had not had the great advantage of the presence of his learned friend, Mr. Newcald, and had *only* Mr. Six-and-Eight to represent them, which accounted for the easy defence which had been placed in his hands that day. On the occasion he referred to, his learned friend, Mr. Softsap, had conducted the defence, and, with a great amount of ingenuity and tact, he had kept a trump card up his sleeve, as without doubt the magistrates had made a mistake, which he (Mr. Spouter) now asked the jury to give his client the benefit of, and to say that he (the prisoner) was only guilty of the minor offence of trespassing in pursuit of game.

The end was soon reached. The judge summed up dead in favour of the prisoner. The case, he said, resolved itself into a very simple one. Did the jury believe the prisoner set the snares, and had at the time the intention of returning and appropriating the rabbits? If so, they must find a verdict of "Not guilty;" but if, on the other hand, they believed that the snares were set by a person other than the prisoner, then the prisoner was guilty. He need not lay down the law any more technically than that. The evidence of the witness Hawk concerning the statement made to him by one James Green, and the evidence of the witness Sharpsite of what someone else had seen, must be dismissed from their minds; but without that evidence he did not think the jury would have much difficulty in arriving at the true state of affairs. The jury need have no compunction in finding that the magistrates were wrong in their decision; that would be no reflection upon them (the magistrates) or upon their intelligence. It was human to err, and it seemed to him (the judge) that an error had been made in the present instance, but it was for the jury to determine, and not for him (the judge) to suggest or dictate, etc. The evidence was clear, especially the cross-examination, and he did not for one moment suppose they would have the slightest difficulty in finding a verdict without troubling themselves to leave the box.

The jury immediately found the prisoner not guilty, amidst great applause from the back of the Court, and the judge approvingly remarked, as he discharged him, that he might consider himself a

very lucky man, and thereupon called for the next case.

Outside the Court the greatest excitement prevailed, and Mr. Six-and-Eight was only too glad to busy himself with a forthcoming issue in which he was interested, as he felt sure he would otherwise come in for a considerable amount of jostling from the crowd; besides which he did not feel much in the mood for showing himself conspicuously after having been so completely bowled over by the questionable cunning of his rivals, Mr. Gimlet and party.

It turned out upon subsequent investigation that the friends of the accused had laid an artful plant for Messrs. Sharpsite and Hawk, and had, during the long interval that ensued between the two hearings of the case, managed to instil into their minds the belief that the late prisoner, with his bosom friend and companion, Jimmy Green, *had* set the snares, and that no one else had had anything to do with them—a belief which it was easy enough to create, and which, as has been recorded, brought about a successful issue.

Squire Broadacres was at first much chagrined by the result of the case, but his disappointment lasted for only a short time. When a few weeks later he called to pay Mr. Six-and-Eight's modest little account, he said:

"Well, Mr. Six-and-Eight, we were beaten over this case—I think I may say you were beaten; but, after all, that scamp of a game thief got more punishment by lying in prison waiting for the trial, and then having to pay his lawyer's costs, than the magistrates would have given him."

A philosophic view of the case which Mr. Six-and-Eight was naturally very pleased at his client taking.

* * * * * *

It must, of course, be understood that, as is the case with eggs (see the chapter on "Egging"), when live game is "reduced into possession" it may be the subject of larceny. Thus the taking of pheasants from a mew, or poults from a coop or rearing grounds, or a wild hare or rabbit temporarily confined in a hutch, would be larceny, and the taker must be prosecuted for stealing and not under the Game or Poaching Acts.

CHAPTER XVII

PROVING AN ALIBI



THIS is a case we are not likely to forget. The offence was as serious a one as the Game Laws provide for, and our conscience has since been somewhat uneasy—not by reason of any act that we are ashamed of, but rather by reason of the over-zeal of our articled clerk, who, though supposed to be an ornament to the office, was a progressive young gentleman whose zeal was apt at

times to get the better of his discretion. On this occasion the case might have been brought to a very different termination had not fortune been exceedingly kind to him, and to ourselves, who were responsible for his actions.

It was during the month of November, when the superabundance of game tempts many a village ne'er-do-weel to risk imprisonment for the sake of an evening's sport and the illicit profit to be reaped thereby, that the member of our staff before mentioned presented himself before us one afternoon to state that during our temporary absence Mr. Pickemup had called upon pressing business of the greatest importance. It was the old, old story. He (Mr. Pickemup) was accused of having been out by night, together with six or seven others, armed with guns, sticks, stones, and other dangerous weapons, etc., for the purpose of taking game. The night watchers had given an alarm, and the men on the estate, headed by the keepers, turned up in force. The gang of poachers were surrounded, and a free fight ensued, ending seriously on both sides. The local policeman, Mr. Irongrip, had been badly mauled, and one of his ribs was broken ; Squire Broadacres' headkeeper, Mr. Sharpsite, had a fractured skull, and one of the poachers had been taken (with the others injured) to the nearest hospital, where they were now all lying together.

Mr. Pickemup, of course, was wrongly accused. He had never been there at all, although it was alleged he had been recognised ; whilst his brother, who, it was well known, usually accompanied him on all his poaching raids, had been taken by the watchers, and was now under lock and key. Mr. Pickemup had read in the

papers that a warrant for his arrest had been applied for, and he had actually had the audacity to write to the police, telling them the same story he told to our Mr. Legalling, adding, as soon as the necessary instructions were given to his solicitors he would present himself at the police station to await the pleasure of His Majesty's commands.

A most cunning rogue was Pickemup. He had already visited by stealth the persons who held the purse-strings of "the Poachers' Defence Fund," a private syndicate "running on their own," if we may be allowed to use the slang term; he had made the necessary arrangements with them for the defence of those who were in custody, and he then hastened to our office to secure our services on behalf of himself, independently of the others, who, he realised, could not possibly escape the penalties of the law, but only hope for a mitigation of their sentence. He stated his case in full to Mr. Legalling, with the oft-repeated assurance "that 'might he never speak again,' 'might he be wry-necked for life,' 'might he be hanged, drawn, and quartered,' if what he then said was not gospel truth, and nothing but the truth," etc., etc. These very assurances are generally so persistently dinned into the ears of lawyers and magistrates that they often raise a doubt in the mind which otherwise might never have existed. As we were out, Mr. Pickemup had arranged to call again at six p.m. to interview us personally, after which he stated he should have no objection to visiting the police station. It now wanted but a quarter to that hour, and before we had time to further discuss the case, a clerk announced the culprit.

As he stood upon the threshold of the inner office our eye ran over his figure, not by any means an unfamiliar one to us. His stalwart frame looked ungainly in the stooping, loose manner in which he held himself; his fingers nervously played with his weather-beaten cap; his head he carried half-erect and defiant, half-lowered and cowered; whilst his mouth twitched and his furtive eyes rolled in their sockets, taking in everything before him, and watching our every movement, although his head was not turned an inch in the process. Under the evident embarrassment in which he laboured, we thought it as well to break the ice.

"Well, Mr. Pickemup, so it is *alleged*" (with great emphasis on the word alleged) "you were with the Deadham Green gang on Saturday night, is it?—and I see by the papers there is a warrant out for your arrest."

"That's it," he broke in; "you are quite right in what you say. I am accused, but, sir, may the Almighty—"

"Now stop just there; we don't want to hear that. You say you were not there, and we must take your word for it; at least for the present." We thought of the immortal Mr. Jaggers in "Great Expectations," and, like him, we did not think it advisable to probe our client too deeply upon the question of his evidence at this stage of the proceedings. "You are too old a hand at the game, Mr. Pickemup, and your name is unfortunately too well known in the county for us to expect a jury to believe a bare statement without evidence to back it. Who have you got to prove you were elsewhere on the night in question?"

"Well, sir, there's Jimmy Green, he'll swear anything."

And the face of our articled clerk beamed with a hopeful and enthusiastic smile as he rubbed his hands at the prospect of such a convenient witness, who was ready to mould his evidence entirely in accordance with what might be required."

"No, sir," we reply, with some warmth," Jimmy Green we will not have, and you know it. How often have we told you we will throw up your cases rather than have Jimmy Green as a witness."

Somewhat crestfallen, Mr. Pickemup suggested his wife, his mother-in-law, and another. He next proceeded to describe the history of the case in such a vivid manner that we had still greater difficulty in swallowing the assertion he had previously made regarding his innocence. However, after some further discussion, we arranged for Mr. Legalling to interview any witnesses he might have and prepare the case for trial. As Mr. Pickemup left us, he turned with one hand on the door handle, and a cunning smile on his face, to say:

"I think, after all, I shall keep those know-all police officers a-lookin' out for me until the morning; if I go to 'em to-night I shan't lay so comfortable, and they will get too blooming conceited with themselves for having got me. Yes; I'll put it off till to-morrow."

True for once to his word, Mr. Pickemup presented himself on the morrow at the Petty Sessional Court-house, where he was committed for trial with the other prisoners; but as the necessary sureties were forth-coming bail was allowed.

A week before the trial Mr. Legalling came to us in great distress. Mr. Pickemup's witnesses were as unreliable as the evidence for the prosecution was

convincing and clear, and the chance of an acquittal looked remote indeed. His (Mr. Legalling's) professional anxiety to win the case was so marked that one might almost have suspected him of being more closely concerned with the accused. It was really amusing to us to observe the personal feeling this young limb of the legal profession exhibited, but seeing the case was solely a question of fact, and not of law, we thought it well for his judicial training to leave it almost entirely in his hands.

At length the eventful morning of the trial dawned, and Mr. Bustler, a promising junior, had been specially retained to watch Pickemup's interests.

Pickemup had amused himself the preceding evening by vainly trying to knock into his mother-in-law ("perverse old warmint," as he styled her) the evidence *he* required her to give, and on her telling him "if he was locked up for a month or two it would be good riddance of bad rubbish, and she'd be blessed if she was going to tell lies for him or anybody else," he turned his attention to his poor, hardly-tried wife (ignorant or forgetful of the fact that she was an incompetent witness),* who fled the house and disappeared rather than perjure herself.

But he was by no means disconcerted. He betook himself to the more hospitable walls of the "Dog and Gun," and, as a last resource, enlisted the services of two close acquaintances of his, namely, Joe the ostler, and the much-despised Jimmy Green. Unfortunately for Mr. Pickemup's case, these two worthies had been engaged in a drunken brawl over-night, in which each had somewhat suffered, but Joe the more so of the two;

* The Criminal Evidence Act, 1898, had not then been passed.

and when he presented himself to Mr. Legalling at a very early hour on the morning of the trial, as had been previously arranged, he appeared with a broken nose, a black eye, and a severe cut across the jaw. Besides, his clothes were anything but inviting, either in outward aspect or otherwise, and his not having shaved for several days gave the finishing touch to as an accomplished a looking blackguard as could be found. Even the enthusiastic Mr. Legalling was taken aback. Pickemup had been artful enough not to bring Mr. Green to the the office. That was a trump card which he (Mr. Pickemup) intended keeping in reserve.

But at this point we had better explain matters. Mr. Legalling, having received his instructions to get up the case, had merely consulted us on the occasion we have mentioned. We had expressed ourselves concisely, saying it was simply a question of fact, and that really he ought to be able to carry the case through without troubling us any further about it. We did not expect he could prove the alibi with the evidence offered, but then perhaps he might be able to supplement it; at any rate, he must do as best he could. This had, so to speak, put Mr. Legalling on his mettle, and he had carried out his instructions to the letter. He tried to find a substitute to prove the half-hearted statement of the wife, to bolster up the apparently useless evidence of the mother-in-law, and the equally useless evidence that was offered by several other witnesses, but in vain; and he was now very much tempted, as a last resource, to interview the disgraced Jimmy Green, if only to hear what he really had to say upon the matter. He knew nothing of what was happening at the Pickemup household; he did not

know the injured wife had fled; that the other witnesses had all but refused to attend, and the defence was threatened with collapse; he was only aware of the fact that Mr. Bustler did not at all like the case, and he had strongly advised the accused to plead guilty, and throw himself on the mercy of the Court. It is perhaps needless to add that such a course of action as this was about the very last in the world that a character like Pickemup would think of following.

But to return to the thread of the sketch. Before Mr. Legalling could remonstrate, the ever-artful Pickemup had read his thoughts and taken in the situation, which he was not slow to act upon. In a voluble manner he rattled off the details of the evidence his witnesses were prepared to give.

"You see, sir, this 'ere chap, Joe Swishem, is ostler at the 'Dog and Gun.' Well, on that very particular night, sir, at 11 p.m., I met Joe outside the house, sir, as he was driving a man out of the stable-yard, and I hailed Joe, and says, 'Joe, can you give me a ride home?' Well, sir, Joe he explains that it was out of his way, as he had to drive a man to Longdale, which, as you know, sir, is four mile the other side of Deadham. Well, sir, I presses Joe, and offers him a bob for hisself, and, as the other chap didn't mind, you see, up I gets, and Joe he drives me home, so I couldn't possibly have been in the squire's woods at a quarter past eleven, now, could I?"

At this point he stopped for breathing space, and Joe chimed in with:

"Quite correct, sir, every word, sir. Gospel truth, so help me!"

"Who was the other man?"

Joe blurted out "Jimmy Green," when he was hit in the ribs by Mr. Pickemup's elbow—perhaps unintentionally; at least let us hope so—as he once more shouldered to the fore to explain that "Joe was kind of taking French leave with his master's horse and trap, which accounted for his having wished to keep him (Joe) in the background, if possible, as he might get into trouble on his own account about it, which he (Pickemup) did not wish for, as he told Joe—"

Mr. Legalling motioned him to silence. He considered whether he should amend the instructions on his brief and risk such evidence. He wondered whether he had better consult his principal, but on second thoughts, the temptation of getting off such a notorious character as Pickemup from so serious a charge was too much for him. A conscientious instinct held him back, but professional enthusiasm goaded him on. He hesitated and—fell.

As his face underwent the various changes, it was narrowly watched by Mr. Pickemup, whose tongue twitched to add more to what he had already said, but he knew the value of silence, and kept his finger and thumb in readiness upon a soft part of the anatomy of the blundering Joseph, to check him should he attempt to venture further. A look of intense relief settled all over him as Mr. Legalling seated himself at his desk and prepared to take the minutes of the evidence offered.

Joe stated the facts (as he asserted them to be) very concisely and clearly, and in such a manner that Mr. Legalling began to think in his innermost thoughts he had perhaps wronged the much-abused Pickemup, and when he finally rattled off the last line of the proof, he

looked more hopefully on the case than he had done at the earlier stages of the interview.

"True bill against all the prisoners, sir," said a clerk, as he interrupted the conference; they are now taking a simple larceny case, and you will probably come on in half an hour."

Now, Mr. Legalling was an amateur actor of some merit, although, as a matter of fact, he himself considered he possessed considerably greater merit in that direction than most people gave him credit for. He also fondly imagined that he had undoubtedly mistaken his profession. How many thousands of others are there whose opinions do not run in a similar groove when they arrive at the age between eighteen and twenty-three? He, like similar stage-struck amateurs, of course possessed a varied assortment of make-up boxes, with all the requirements for a good disguise. Being a bit of an artist, his talent in this detail of the art was considerably above the average. Now he intended it should serve him to advantage.

Giving Joe threepence, he sent him off for a shave and brush-up at the nearest barber's shop, with strict injunctions to be back again in ten minutes at the outside. As soon as he had gone, he sent an office-boy to his lodgings for the necessary boxes containing his make-up materials, and when Joe and Pickemup returned, the former bearing evidence of the expenditure of all the coppers, although not strictly in accordance with the instructions in which they were given, he (Legalling) was quite prepared to carry out the bold project he had formed in his fertile brain. Locking the door, he placed Joe in a chair with a towel round his neck, and applying

grease-paint freely to his face, soon obliterated all signs of the encounter he had gone through, and erased the scars with which he was bedecked. Pickemup sat silently watching the process with admiration and unexpressed satisfaction. He could not quite realise the idea until he saw the face-powder being carefully smoothed over with the hare's-foot, and a few finishing touches applied. Then he could hardly contain himself, and it was only by a superhuman effort that he restrained a boisterous demonstration of his approval. In a few minutes the rascally-looking features of Joseph had been converted into an innocent, puritanical face, with a healthy, peach-like glow that an advertiser of toilet soap would view with envy. The change to Pickemup's eyes was miraculous; even Mr. Legalling could not help feeling some pride in his handiwork, although it was calculated to deceive. He gave strict injunctions to Joseph not to touch his face under any consideration, to avoid the sun, or from getting into a strong light, and when in the witness-box to give his answers as short as possible, with no explanatory statements, and as soon as his examination was over to clear immediately. Both worthies were then kept secure in a private room until the time came to escort them to the Assize Court, Mr. Legalling following later at his leisure.

Inside, at the back of the Court, there was the usual crowd of motley sight-seers, packed as thickly as herrings in a barrel, and monopolising every available inch of the space allotted to them. There were criminals there who had more than once stood in the dock themselves; there were the old habitués who never missed an Assize; there were friends of the prisoners to be tried,

whose faces showed the trace of recent tears and the furrows of prolonged anxiety; there were those who had been attracted by sheer curiosity; and there were sporting pals of Mr. Pickemup's, who, either from admiration of that poaching hero or from a pecuniary interest in the shape of a wager pending upon the result of his trial, had attended to watch the proceedings and hear the result.

At last the case of larceny was over; the jury had returned a verdict of guilty against a miserable drabbling of a girl with a strong recommendation to mercy. She had been accused of stealing a pair of boots of the value of 1s. 9½d., and the judge decided to defer his sentence. The Clerk of Arraigns rose, and Pickemup, with the other members of the Deadham Green gang, were ushered into the dock, soon to learn their fate. The jury were duly sworn, the indictments, with their rigmarole counts, were read over, the judge roused himself with an effort from a strong tendency to doze, the stir and bustle from the lawyers' and barristers' clerks was suppressed by a stentorian cry of "Silence in the Court!" from the clerk, and counsel for the prosecution commenced the incriminating story which he was about to prove against one and all of the prisoners.

He related in a concise and clear manner how, on the evening of the 14th of November last, the night-watchers on Squire Broadacres' preserves had gone as usual to their customary beats, how they had heard shots in the direction of the Deepdale wood, how they had called up the keepers, and how, headed by the valiant P.C. Iron-grip and Mr. Sharpsite, they had surrounded the wood and surprised the gang red-handed at their work. The

fight which ensued, in which the keepers pluckily contested against these men, who were well armed, and numbered more than three to one in the unequal contest. How P.C. Irongrip had tackled two of the poachers and overmastered them, when another cowardly and unmitigated ruffian had sneaked up behind him and knocked him senseless with a gun-barrel. How Sharpsite had gone to the rescue, but not before Irongrip had been kicked and jumped upon when down upon the ground, whereby a rib was broken, and he could only attend this Court with great pain and difficulty. How Sharpsite had also been attacked and knocked senseless with the same weapon that had felled P.C. Irongrip. Counsel then proceeded to paint in vivid colours the heroic action of the police-constable, the keepers, and the watchers, stating that had it not been for their dogged pluck and unconquerable persistency, those villains now standing in the dock would never have been brought to justice. It was true one of their number had been taken to the hospital, but he (counsel) would prove conclusively, as he submitted, to the entire satisfaction of the jury that those injuries were inflicted accidentally by one of the prisoner's own comrades, and not by any of the witnesses for the prosecution.

Here the opening speech was interrupted by an audible interpolation from the injured prisoner—"Them lawyer chaps can lie. I suppose they're paid accordingly."

Without deigning to notice the observation, counsel went on, lauding to the skies the noble conduct of Squire Broadacres' servants, who had been injured whilst faithfully carrying out their arduous duties, not forgetting to throw in references of the sorrow and anxiety of poor

Sharpsite's wife and seven children—with another expected. How he anticipated disparaging comments from his learned friends, who would, no doubt, attempt to throw dust in the eyes of the jury, whom he suggested were far too cute and open-eyed to be misled in their responsibilities in seeing that justice was carried out, by any such aspersions, nor would twelve such men as they were, having *more* than their fair share of *common sense, as they undoubtedly had*, be likely to be led astray by any side allusion, however clever and persuasively eloquent such allusion might be, on the plea of sympathy for men out of employment, with wives and children at home crying for bread, and that they (the accused) had only attempted to help themselves to the wild birds of the air and the animals of the field which they (his learned friends) might submit, the accused believed themselves as equally entitled to take for their own use as anybody else. Such a plea might have been of avail in the last century, but the jury would not hesitate now, in the nineteenth century, etc. However their sympathies might tend, they must grapple with the stern facts of the present circumstances. They must uphold the laws of the land, and do their duty to their country and to their Queen, and in the face of such evidence as he should place before them there could be no doubt that it was their bounden duty to return a verdict of guilty against each and all of the prisoners.

At the conclusion of his speech, which lasted half an hour, all but three minutes, a buzz arose from the back of the Court, and everyone looked upon the result as a foregone conclusion, nor was it until silence had been twice called, and the first witness escorted to the box and sworn, that the shuffling of feet and loud whispering ceased.

William Falcon, a night watcher in the employment of Squire Brodacres, bore out the opening statement, and he was corroborated by two other watchers.

The facts were stated in the usual stereotyped form, with more or less exaggeration by other witnesses, and bit by bit the most damning evidence was piled up against the accused. In vain did the counsel for the majority of the defendants bully and threaten each individual witness with the awful punishments for perjury; in vain did he throw his forefinger at them and say, as though at last he had got them, "Now, sir, let me compare your statements with those of the last witness, and perhaps we shall get to the bottom of this matter and learn the real truth." It was no use; he was quite unable to find any weak point in their evidence.

Mr. Bustler, on the other hand, appeared quite happy and contented. His questions were few and short. When a witness appeared at all doubtful of some of the minutest details he pressed him in a genial, yet serious, manner as to whether he could swear hard and fast that he had seen Pickemup with the others on the night of the 14th of November, which few of them were really able to do. One witness even went so far as to volunteer the statement that "Pickemup was far too old a hand at the game to put himself prominently forward. Oh, no! he would leave that to others, and whilst they were fighting it out he would decamp with the spoils. He (the witness) could not swear for gospel certain that he had seen Pickemup departing as he had suggested; but he had seen someone very much like him, and he could nearly swear to him, but not absolutely."

Mr. Bustler having elicited somewhat similar evidence, by means of skilful cross-examination, from several of the witnesses for the prosecution, very wisely let well alone, and sat down, hugely satisfied with himself, whilst Pickemup assumed an air of injured innocence, and looked upon his companions in the dock as though they were the very last men in the world with whom he was likely to associate.

P.C. Irongrip and Sharpsite both swore positively that Pickemup was present all the time, but in cross-examination they were compelled to admit that it was not Pickemup who struck them, and as they were both "unsensed" for part of the time, they had slightly exaggerated in that particular, but they most distinctly remembered seeing him when the gang was first surrounded, and he was far too well known a character for them to mistake.

The case for the prosecution having closed, counsel for the defence of the prisoners, other than Pickemup, rose to address the Court. He struggled manfully with a weak case, and endeavoured, so to speak, to make bricks without straw. By a clever twisting of words he would have the jury believe that the case for the prosecution had been grossly exaggerated. He commented on the crying injustice that was daily perpetrated upon really innocent men because they viewed with envious eyes a few miserable rabbits, or possibly a hare, which instinct and nature impelled them to regard as lawful food. He drew strong comparisons between the rich man and the poor man, complaining that the laws of the land were all one-sided, winding up with a strong appeal to the jury to give the accused the benefit of the doubt, and not to send their

unfortunate wives and children to the workhouse by robbing them of the breadwinners of their families; and he sat down amidst vociferous applause from the back of the Court—which was instantly suppressed.

Whilst this speech was in progress, Pickemup had sent a note to Mr. Legalling imploring him to put Jimmy Green into the witness-box. Leaving the Court, that worthy was found at the door, and immediately volunteered his evidence without waiting to be asked. This was communicated to Mr. Bustler, as the defence of the other prisoners closed.

It was now his (Mr. Bustler's) turn to address the Court. He rose, calm and collected, and having adjusted his bands and wig, smiled benignly on the jury. It was not his intention to detain them either by his speech or the testimony of his witnesses; his case would be one of the briefest it had ever been his duty to lay before a Court of Assize. To put the whole facts in a nutshell, he would inform them that his client, Mr. Pickemup, on the night in question was elsewhere; he should prove by witnesses whose veracity could not be questioned that he (Pickemup) was driving home from that well-known hostelry, the "Dog and Gun," when it was alleged he was assisting in the attempt to annex some of Squire Broadacres' coveted pheasants from the Deepdale wood, and when the jury had heard the evidence he should place before them it would be their duty to dismiss the case against his client, who would leave that Court without a stain upon his character. He called Mr. James Green.

At this, Mr. Legalling had a hurried consultation with Mr. Bustler, which seemed to somewhat annoy the latter, who exclaimed, loud enough for many in the Court to hear:

"I think, sir, I know best how the witnesses should be called."

Mr. Green was not slow to answer the summons, kissing the book immediately he entered the box, and before he was sworn, which brought forth a rebuke from the judge, to which he answered:

"All right, yer wurshup—I mean honour—no, yer ludship; but I ain't used to this 'ere job," thereby creating amusement among the onlookers, and a considerable amount of anxiety to pervade the mind of Mr. Legalling.

"You remember the 14th of November?"

"Yes, sir."

"You live at Deadham?"

"Yes, sir."

"You—"

"Yes, sir."

"Really, Mr. Green, will you please wait until you hear the questions put to you, and not answer before?"

"No, sir—I mean yes, sir."

"What were you doing about 10.30 in the evening on that night?"

"Ten-thirty?"

"Yes; 10.30."

"Am I bound to answer that, sir?"

"Certainly you are. Now what were you doing at the hour named?"

"Well, sir, if I must say, I suppose I must; I was having a bit of a blarney with Mike Kelly about a dawg, and when the dawg—its's Mike's dawg, you see—when it bit me, I kicked the dawg, and Mike he ups and kicks me; then I goes for Mike, and then the fur flew a bit."

"Stop! stop!!—But after that?"

"After that; oh, after that we had a drink together, and Joe Swishem—he's the ostler at the 'Dawg an' Gun, is Joe—he comes in, and when he hears of it he gets a-fighting with Mike, 'cos Mike got the better o' me."

"But we don't want to hear about that."

"Then what am I here for?" said the witness in an impudent manner, which was well assumed.

"What are you here for?" said Mr. Bustler, pretending to be angry. "Why to answer my questions, sir, and you'd better be careful. Now, did you see Mr. Pickemup that night?"

"Why, o' course I did. Didn't I drive home along with him? Didn't he give Joe Swishem a bob for doing it, and both of us a drop of whisky when he got there. Did I see Pickemup? Why, you know that well enough. Who says I didn't?" And he looked round the Court as though he wanted to find the man who would dare to tread on the tail of his coat.

Mr. Bustler proceeded: "When you have quite finished, perhaps you will tell us how it was, where it was, and when it was you met him?"

"You see," said Jimmy Green, "after we'd had our fight and a drink together, I and Mike went down the stable-yard to the harness-room for a smoke. Whilst we were there, up comes Bob Pickemup, and he says to Joe, after he'd had a smoke and a yarn with us about an hour, 'Joe,' he says, 'will ye drive me home? It's the best part of four miles, and I don't fancy walking with a stiff leg.' Well Joe, he says, 'What would the boss say?' 'Oh, hang him,' Bob says: 'he's in bed and asleep, and if you take the cart out on to the road over the meadow, and back the same way, he'll never know. I'll give ye a bob,'

he says, 'and a glass o' whisky, and Jimmy he'll come with you to keep yer company back again. Yer might oblige an old pal,' he says, quite friendly like. Well, yer see, Joe he's generally a bit hard up, and a bob, with a glass o' whisky as well, and a fine night, kind o' tempted him, I suppose; leastwise, he slips off and gets the 'oss, whilst me an Bob (that's Pickemup, you know) gets the gig out o' the cart-shed and out on to the meadow at the back o' the stable, and away we goes, as nice as three fleas on a pig's back. We didn't hurry ourselves, and when we got to Bob's house we thought it best to rest the horse a bit, so we stayed until the whisky was all done, and then we come home again."

"How long did you stay?"

"Maybe an hour; maybe more. Leastways, we didn't get home again till one o'clock in the morning."

"That will do, Mr. Green, thank you," and Mr. Bustler sat down.

Prosecuting counsel tried hard to shake the testimony of the witness, but he adhered persistently to every detail, and in many instances caused roars of laughter in Court by a witty rejoinder to questions put to him.

Had he been to prison?—Well, if he really did want to know, he had enjoyed a holiday at Her Majesty's expense, with walking exercise uphill by way of recreation. But what had that got to do with this case was what he wanted to know.

Did he often get drunk?—As often as he got the chance—at *other* people's expense.

How often had he been fined for drunkenness, etc.?—Quite often enough to find the bobby (pointing

to P.C. Irongrip) in uniform for the next five years—*excluding* his boots.

Did he remember where he was?—Was he likely to forget it?

And at last he was told he might leave the box, which he did with great alacrity.

Mr. Bustler next called Joseph Swishem, and the cry re-echoed down the corridors outside the Court. On Joe's appearance in the witness-box, another buzz of conversation could be heard from the back of the Court, even after silence had been called. Audible whispers were frequently distinguishable.

"Why, that ain't Joe!"

"I tell yer 'tis!"

"Well, what's he done to his face?"

"He do look blooming, don't he?"

"Mikey give him a black eye."

"You're a liar! Who says so?"

The usher again called silence, and the case proceeded. Joe corroborated the evidence of the last witness almost *verbatim*. The questions put to him were few, and Joe answered them in a mild tone of voice, very different from the tone he usually adopted when in the society of his ordinary companions. He hesitated considerably when questioned about taking the horse and gig, and expressed a hope that he would not get "the sack" for so doing. It was the first time he had done so, etc., and he would not have done it only Mr. Pickemup had hurt his leg, he told him, and he could not walk well, and as he particularly wanted to get home to be with his wife, whom he expected was going to "have another" that night, he didn't think there would be any harm done. He had not

told his master, but supposed he would have to now this job was on, and so forth.

In spite of his meek and mild manner, the witness showed considerable uneasiness, and made a bolt to leave the box immediately Mr. Bustler had finished with him. Had it not been for this, he would probably have escaped with but few questions in cross-examination. As it was, prosecuting counsel rose with a knock-'em-down kind of manner, and attempted to bully the witness into prevarication. As question after question was hurled at him in rapid succession, the perspiration rose in great beads on his brow, and ran in streams down his face. Several times he searched for his handerchief, and several times he put it nearly up to his face, just remembering in time the instructions he had received. Mr. Legalling, who was seated beside Mr. Bustler, grew hot and cold by turns, and when the warning red-cotton handkerchief appeared he was seized with such a fit of coughing that Joe's attention was attracted, and perhaps his memory was somewhat influenced by it.

At this stage of the proceedings Mr. Six-and-Eight pushed his way into the body of the Court, as though the whole place belonged to him, and inquired from his articled clerk how things were looking. It was a relief to Mr. Legalling's mind to be able to talk to anyone at this, the crisis of the case, and eagerly he took advantage of it. He stated how he had been compelled to listen to James Green's evidence, as he had come to the Court that morning, and stated what he knew of the case, and, despite his bad precedents and character, Mr. Bustler had thought fit to risk it, and now he had passed the ordeal with flying colours, he (Mr. Legalling) hoped

Mr. Six-and-Eight would not be angry with him, as he was so anxious to win the case, everyone having told him it was next to impossible to get Pickemup off.

Here Mr. Legalling took a momentary glance at the witness, who, not being able to use his handkerchief, had given such a violent sneeze that it has caused considerable apprehension, not to mention annoyance, to those sitting around and beneath him. Forgetting everything, he (Swishem) pulled out the aforesaid handkerchief and gave his nose a good blow. Mr. Legalling's legs trembled beneath him, and he hardly dared look up. If the witness had been troubled and placed under a great inconvenience, he (Mr. Legalling) now suffered very much more so.

But still counsel hammered away, shaking his forefinger, banging on to the table, and cautioning the witness to mind what he was about, and to remember that he was upon oath. And when Mr. Legalling, taking courage from the uninterrupted continuation of the case, looked up again, he almost laughed aloud. From that calm and innocent face, glowing with beautiful flesh tints and a bloom that a society beauty well might envy, protruded a dirty brown-looking nose, with marked evidence of intemperate habits. Whether others besides Mr. Legalling noticed this sudden adornment to the features of the witness, history does not record, but if they did they probably put it down to the violence of his nasal convulsion, or the friction consequent upon the application of the coarse handkerchief to that delicate-looking organ. Anyhow, no notice of the change of appearance was taken and Joseph Swishem was allowed to depart, much to his relief, without further comment or question.

Sarah Ann Mullins was the next witness. She was mother-in-law to the accused, and arrived in the box heated and flurried, with a look of anxiety on her face and traces of recent tears, which betokened either a recourse to unsweetened gin or a troubled mind.

Did she remember the evening of the 14th of November last?—Sure she did. It was when her dear daughter ought to have had her child, and didn't.

When did her son-in-law arrive home?—This question was objected to as leading, and a lively passage of words passed between Mr. Bustler and counsel for the prosecution, in which the former intimated to the latter that when he required a lesson in the elementary principles of examination-in-chief he would consider the advisability of seeking the assistance of his *most* learned friend.

"Well, Mrs. Mullins, where was your son-in-law on the night in question?"

"At home, sir."

"All the evening?"

"No, sir; he came in about half-past eleven."

"Alone?"

"No, sir."

"Who was with him?"

"Mr. Swishem and Mr. Green."

"Anyone else?"

"Only the horse and cart, sir."

"Well, what happened then?"

"They tied the horse up and came indoors, sir."

"How long did they remain?"

"I don't remember. I went up stairs to my daughter, but they stopped talking a long time, and then my son-in-law came up to bed."

"Did he go out again that night?"

"Certainly not, sir. What should he want to go out for at that hour?"

Cross-examination of this witness completely failed to elicit anything further, and the counsel for the prosecution again addressed the jury, during which eloquent address the learned judge took forty winks.

The summing up was short and to the point. With regard to the prisoner Pickemup, he was most unjustly accused, and his lordship thought it a shameful thing that the police should have put him to all this trouble and expense for no other reason that his lordship could see than the fact that he had been previously convicted of taking a few paltry rabbits and an occasional pheasant or partridge, as they had suggested in their evidence. It was clearly the duty of the jury to dismiss him, and he would leave the Court without anything to his discredit. As to the other prisoners, they could not hesitate for one moment in their verdict, and they could rest assured he would deal with them in accordance with their merits.

Without leaving the box, the jury acted on the suggestion of his lordship, returning a verdict of "guilty" against all the prisoners, with the exception named; and being old offenders, they were each sentenced to three years' penal servitude.

This concluded the criminal business, and the Court rose. To say that Mr. Six-and-Eight was surprised is putting it mildly, but not so in the case of Mr. Pickemup. He took it as a matter of course; he quite agreed with his lordship. It was very hard on him to suspect an innocent man, and he meant to be even with that —— Irongrip on the first occasion that offered. But acting

on a hint from Mr. Legalling, he kept these opinions to himself, and, in company with Green and Mrs. Mullins, left the Court. Outside, a large crowd had congregated, and on his appearance a heated altercation took place with some of the friends of the men who had been convicted, in which unkind remarks and insinuations were freely made, and, if they contained any foundation of truth, Pickemup was indeed fortunate at the verdict given. A fight seemed imminent, and had not a strong cordon of police put in an opportune appearance, Pickemup might have been severely jostled by the threatening crowd. Seeing how matters stood, he was wise enough to make himself scarce. As to the witness Swishem, he had mysteriously vanished as soon as he had been permitted to leave the box, and the curiosity of those who had expressed their doubts upon his identity remained unsatisfied.

In the more secluded chambers of Mr. Six-and-Eight's offices, the clerks were commenting upon the case with great satisfaction and suppressed mirth, until the austere presence of Mr. Six-and-Eight himself caused them to take a hurried flight to their respective desks, where a great scratching of pens bespoke an excessive diligence over their duties.

Mr. Legalling, although triumphant, was uneasy in his mind, and it was not until many months had passed, and a closer intimacy between his principal and himself had given him sufficient courage, that he unburdened himself, and confessed the full details relating to the defence. He had, with tactful resource, chosen a most opportune and propitious moment, when Mr. Six-and-Eight had dined wisely and well, and was at the time holding a

glass of fruity port, of '63 vintage, between his eye and the chandelier.

"So, so, Mr. Legalling, that is how you hoodwinked the Court, is it? Well, my boy, it's over now, and we'll say no more about it, but you played with very sharp tools, and it's lucky it ended as it did. Youthful enthusiasm is accountable for much."

And as he gazed vacantly at his empty wine-glass, a merry twinkle lighted up his kindly eye. With the *rubis sur l'ongle*, he added, "Don't let it occur again," and he passed on the decanter.

CHAPTER XVIII

LICENCES



WE think this is the most convenient place to call attention to a recent important alteration with regard to the collecting of licence duties.

By the Finance Act, 1908, and an Order in Council made thereunder on the 19th October, 1908, the levying of certain licence duties, including game, gun, dog, and game dealers' licences, has been transferred to the various County Councils (including County Borough Councils) as from the 1st January, 1909.

The result of this transfer is that Inland Revenue Officials now take no part in the collection of such licence duties or in the prosecution of persons who are in default.

Consequently, licences cannot be obtained, as was formerly the case, from the Inland Revenue Offices at

the various large towns, being now only issued at Post Offices, except that in some instances the Postmaster-General has, on application of a County Council, appointed an official of the Council to issue licences.

Where this has been done, as an alternative to the Post Office, licences may be obtained from the official in question at the offices of the Clerk to the County Council. In place of the Excise officers the police have been deputed by the various Councils to investigate suspected cases of default in taking out licences and to prosecute offenders. The Councils have, under the Finance Act just mentioned and a section of the Local Government Act, 1888, which is incorporated in the former Act, the right to delegate their powers to any officials, but as a rule it is believed that only one or two officials in the department appropriated to the levying of local taxation licences have, in addition to the police, been invested with the powers originally given to Excise officers of the Inland Revenue. The powers conferred by Statute as hereinafter mentioned on the last named officials of demanding inspection of licences, etc., do not seem to have been taken away, but it may be confidently asserted that in practice such powers will not be exercised by them, but only by the police and other officials (if any) appointed by the County Councils.

With regard to prosecutions for Excise penalties referred to in this chapter, in other words, all except those imposed by the Game Act, 1831, only the County Councils, by their duly authorised officials (who may of course be the police), can take proceedings to recover them (see Inland Revenue Regulation Act, 1890, Sec. 21),

save in the case of a penalty for keeping a dog without a licence, for which a police constable can prosecute, whether authorised by the Council of his County or not (Customs and Inland Revenue Act, 1878, Sec. 23), or where, as for refusing name and address where a gun licence is demanded and not produced, authority is given to arrest an offender. County Councils have also power to remit any penalty imposed under the Excise Acts, quite irrespective of the powers of Justices to mitigate them as hereinafter mentioned (Inland Revenue Regulation Act, 1890, Sec. 35).

There seems to be no reason in theory why proceedings for the various penalties imposed by the Game Act, 1831, which, as subsequently mentioned, are, in several instances, cumulative on the Excise penalties, should not be commenced by any individual, but in practice, at any rate, it has been left to the Inland Revenue officials to prosecute either under one Act or the other, or under both where the penalties are cumulative.

It might also be here noticed that proceedings for penalties under the Game Act must be commenced within three months of the commission of the offence (Sec. 41) ; those for an Excise penalty, if proceeded for summarily before Justices, within six months (see 11 & 12 Vict. c. 118, Sec. 3).

Further, in proceedings for a penalty imposed by the Game Act, it is not necessary to prove affirmatively that the defendant has not taken out a licence. As soon as it is proved that he has done any act which would require a licence, the onus is placed on him to prove that he had one at the time of doing the act in question (Sec. 42).

Licences to Kill Game.

It may with truth be said that the ordinary sportsman is not particularly well versed in the law relating to licences to kill game. He knows that if he goes out shooting (game), he is required to have a £3 Excise licence, which he gets at the Post Office (Money Order Office), and he knows that for his gamekeeper, if he has one, he requires a £2 licence. He possibly also knows that if he takes out his licence after 1st November he gets it for £2, and possibly that he may take out a 14-day licence at any time for £1; and finally, that all game licences, except the casual 14-day ones, expire on 31st July. But it may be said, "That's all there is to know." True, the above contains within itself an epitome of the schedule set out in the Game Licences Act, 1860, but there are many points on which the practical sportsman might well be better versed than he is.

In the first place, who requires a licence? Not only those who shoot, but every person, with the exceptions hereafter noted, who uses any dog, gun, net, or other engine for the purpose of taking or killing any game, woodcock, snipe, quail or landrail, *or rabbits*, or any deer, or takes, or kills, or assists another in taking or killing any such animals, whether with a dog, gun, etc., or not. (Sec. 2.)

It will perhaps come as a surprise to some readers to see rabbits enumerated, as everybody knows—or thinks he knows—that a game licence is not required for killing rabbits. The fact is, almost "everybody" comes under the exception (Sec. 5 [2]), which allows rabbits to be taken or destroyed without a game licence by the owners and tenants of the warren or "inclosed ground" where

they are killed, or by any persons taking or killing them with the permission of such owners or tenants. The net result is, that anyone who is lawfully taking or killing rabbits in a warren or "inclosed ground" does not require to have a licence to kill game, *but a trespasser does*. That is what we take to be a common-sense view of the exception, though there is some ground for suggesting, as is done by one learned author (Warry's "Game Laws"), that "sporting tenants" (*i.e.*, those who hire the shooting without the land) require to have a game licence to kill rabbits. The question has never, we think, been raised in practice, as there is generally something besides rabbits on a hired shoot, and a licence is taken out for the game; but still, it might arise in this way: The tenant of a shoot sometimes gives a friend who has no game licence a day with the rabbits. Is the friend committing a breach of the law? He probably has not asked permission of the tenant of the land, as he had no need to, and the Act says nothing about the sporting tenant's permission being sufficient. We believe that the Inland Revenue officials have not been accustomed to inquire, and the County Police will not in future inquire into such cases to know whether permission has been obtained from the tenant of the land. In any event, we should argue that the consent is impliedly given in the letting of the shooting, or in the hiring of the land, subject to reservation of shooting, and that therefore the county is not being defrauded of its rightful dues.

With regard, however, to trespassers after rabbits, it is clear that the provision requiring a licence does extend to them, and this is a point that may well be borne in mind by those who preserve game and rabbits. Prosecute

your trespassers yourself first, and then set the County Council on to prosecute for breach of licence laws.

With regard to hares, no game licence is required for coursing or hunting with greyhounds, beagles, or other hounds (Sec. 5 [3]), nor is any licence required by a tenant shooting or killing them (either by himself or duly authorised person), under the provisions of the Ground Game Act, 1880, which we have previously considered. There is also an exception in the Hares Act, 1848, under which the occupier of land or the owner thereof who has the right of sporting to kill hares on that land without a game licence; and such owner or occupier has also the power to authorise one other person to kill hares on the land without having a licence; but as that authority has to be in writing, and a copy deposited with the magistrates' clerk, the provisions of this Act are now rarely, if ever, taken advantage of. Hares like other game, however, may only be sold to a licensed dealer (see next chapter), and it seems doubtful whether an occupying owner who does not let off the shooting can sell the hares he kills at all unless he has a game licence; though if he lets the shooting he may do so, for he then comes under the Ground Game Act, 1880, which, as we have seen, expressly authorises ground game killed by an occupier to be sold without a game licence.

Woodcocks or snipe may be taken with nets or springs without a game licence, but not shot. (Sec. 5 [1]).

Deer may be hunted with hounds, and in an inclosed land may be killed by the owner or occupier or by any person by his permission without a licence. (Sec. 5 [4] and [5]).

It will have been observed that it is not the actual killing only which is covered by the Act, nor even shooting. To go out with a dog and gun in search of game is an offence if the person has no game licence; or to go out with a dog alone in search of rabbits, if the person is a trespasser, and so not included in the exception with regard to rabbits, which we have considered. So also is it to set a snare for hares, unless the setter is exempted under the Ground Game Act, 1880, or the Hares Act, 1848, mentioned above.

The Act is so absolutely clear on this point that we should have thought it a waste of money to contest the liability. Some members of the legal profession evidently held a different opinion, for (since the first edition of this book was published) it has been solemnly argued that where several unlicensed persons were seen to shoot at a pheasant which was killed, they could not be convicted under Section 4 of the Act of 1860 because it was impossible to say which of the persons actually killed the game. Of course, the Court rejected this theory, and held them all liable to the penalty, Hunter v. Clark, (1902).

A licence only dates from the time it is actually granted, and a man cannot legalise his act of shooting without a licence in the morning by taking out a licence in the afternoon, though, of course, as is well known, the Inland Revenue authorities have not, and probably County Councils will not, take advantage of mere inadvertence where there was evidently no intent to take game without a licence.

It will be seen from what we have said above that the Act is wide enough to apply to all persons aiding or

assisting in the taking of game, and therefore it was necessary to exempt such persons as beaters, and the Act contains an exception sufficient to include them. In order, however, for any person actually taking part or assisting in the taking or killing of game, woodcock, etc., to be exempt from the licence, certain conditions precedent must be observed. The persons in question must be assisting a person who has himself taken out a game licence. So if the owner of the sporting has forgotten to take his licence out before (*e.g.*) having his first shot at the birds on the 1st, not only has he brought himself within the law, but has rendered all his beaters and other unlicensed persons assisting liable to penalties for not having game licences.

Moreover, the owner of the game (or one of them, at least, if there are more than one) must be actually present at the time the unlicensed persons are employed, or the latter are liable to the penalties of the Act. The beaters must be "in the company or presence" of the person for whose use they are helping to take the game, etc. But we can go further than that; for *not only must the game owner be there, but he must take part* in some way *in the sport* by using his "own dog, gun, net, or other engine." So, for example, if the host were too unwell to shoot himself, and merely drove out to see how his guests were going on, all the beaters would technically be liable to penalties for not having game licences. Possibly, if the host took his own dog, and were well enough to himself order the dog to retrieve, the beaters would not be liable, though otherwise they undoubtedly would be. Of course, the County Council would not prosecute in the supposititious case, but they have full power to do so.

A gun carrier or loader seems to hold the same position as a beater, and the opinion is hazarded that, if the host is licensed, and is present at the shoot, a man carrying a gun for a guest is not required to have a licence, but if the host himself be unlicensed, this makes the gun-carrier an offender against the statute, even though the guest for whom he is carrying is duly licensed.

Strictly speaking, the dog or gun which the principal uses must be his own property, in order to relieve his assistants from the penalties of the Act; and it is clear that, if a beater, or other unlicensed helper, brings his own dog for the use of the shooter or shooters, he (the owner of the dog) brings himself within the Acts and is liable accordingly.

A person assisting a licensed gamekeeper to kill game, etc., must himself be licensed. The exemption does not extend to such a case. A mere spectator is not liable, but, of course, if he takes a casual shot at a partridge or pheasant with a friend's gun, he becomes at once an offender. A minor is as much liable to the penalty for shooting without a licence as a person of full age.

The excise penalty for breach of the Act is £20 (Sec. 4) but the Justices may reduce it for a first offence at their discretion, for a second offence to not less than £5 (Summary Jurisdiction Act, 1879, Secs. 4 and 53. Excise Management Act, 1827, Sec. 78). Any subsequent conviction under the same section will be deemed to be a conviction for the "same offence," although the two offences were not committed in the same year. (Phillips v. Stephens, 1898.) There is also a cumulative penalty of not exceeding £5 imposed by Sec. 23 of the Game Act, 1831, on any unlicensed person taking or killing any

game or using any dog, gun, net, engine, or instrument for the purpose of searching for, taking or killing any game. This cumulative penalty, it will be seen, only extends to the principals, and not to those aiding and assisting, and to the taking, searching for, etc., of "game" alone.

A gamekeeper's licence ceases to be in force for that particular gamekeeper as soon as he quits the service of the master who procured the licence, or when he ceases to hold his appointment, but such licence may be transferred to any gamekeeper appointed in his place by endorsement made at the Post Office or (where there is an official appointed to issue licences) at the County Council offices (Sec. 8). No fee is required.

In addition to the £2 licence, a 15s. tax is payable for every gamekeeper as a male servant. The assessed tax of 15s. is not payable in respect of a servant who is *bonâ fide* employed for some other duty (for which a tax is not required), and only partially as a gamekeeper. (Sec. 2.)

Thus, for a labourer who is occasionally employed as a gamekeeper, no 15s. tax need be paid, but in that case no gamekeeper's licence can be taken out. He must either have an ordinary £3 licence or he must be strictly prohibited from killing any game (except hares), or any woodcocks, snipe, quails or landrails; and hares he must only kill under certain conditions when allowed by the Hares Act or the Ground Game Act. The reason for this is that *a gamekeeper's licence is only applicable to a man in respect of whom his master is chargeable to the assessed taxes, as for a male servant.* Therefore, if the economical master wishes to avoid the assessed tax by making his gamekeeper, say, a woodman as well,

he must go further and reduce the man from the position of gamekeeper to that of vermin-killer. Of course, on small estates, that is what the so-called gamekeeper often is; but even with the most strict observance of the rule that he is not to shoot any game, etc., a man in this position often brings himself within the law. If he has a dog of his own, and that dog is used at his master's shoots, he is liable to the penalty under the Act. If it is the master's dog under the man's charge, the case is, of course, different; but it frequently, if not usually, is the case that such so-called gamekeepers own the dogs in their charge, and by so doing bring themselves within the four corners of the Act.

A gamekeeper holding a £2 (gamekeeper's) licence can only kill game on the lands over which his employer has the right of sporting. The proviso in Section 2 of the Act relating to gamekeepers' licences speak of "game" only, and make no mention of woodcocks, etc.; and there seems some grounds for suggesting that a gamekeeper with a £2 licence may not shoot woodcocks, snipe, etc., though we confess we have never seen the point raised before.

A person convicted of trespass in pursuit of game forfeits his licence for the year, and must take out a fresh one if he wishes to continue to kill game, etc. (Section 11).

If any person is in pursuit of game, etc., an inspection of his licence may be demanded by an Inland Revenue officer, by a police constable or other official appointed for this purpose by the County Council, or by the owner, occupier, landlord, or tenant, of the land on which such person is, or the lord of the manor in which such land

is, or his gamekeeper, or by any other person who himself has a game licence. If the licence is not produced, the person's name and address may be demanded; and if this also is refused, or a fictitious name or false address is given, a penalty of £20 (*subject to mitigation as for the offence of killing game without any licence, see above*) is incurred. The owner or occupier of the land may make the demand, although he himself is not licensed. A very eminent judge expressed the opinion many years ago, under a somewhat similar provision in an Act of Geo. III, that a person asked to produce his licence had no right to require first the authority of the person making the demand; if he refused to produce it, he took the risk of the person demanding being duly authorized. (Scarth *v.* Gardener, 1833).

A Recollection.

Whilst writing on this subject a most amusing glint of the past flashes across our mind, which may well be placed on record. We were one day shooting, in company with several friends, upon a heavy land beat, which was freely interspersed with marshland and water meadows. Partridges we could not find, and recent rains had driven the rabbits into their holes in the higher banks, while pheasants were few and far between.

Amongst the party was a youngster from Cambridge, who had recently distinguished himself on the cinder track, and whose main hobby in life seemed to be the playing of practical jokes upon his acquaintances.

Sport was a failure, and shooters and beaters alike were disheartened and sincerely wished themselves at home, but our host struggled on, hoping against hope

that we should find game, and that things would brighten. Thus it was we found ourselves, just before lunch, lining the hedgerow of a field adjacent to the main road, when presently a cart passed, and a fussy, dictatorial little man dismounted and took a bee-line for the shooters. Stepping up to the first he came to, he explained that he was an Inland Revenue officer, and demanded to see his (the shooter's) licence to kill game. Of course, he had not got it with him, and out came the official note-book. With the next gun it was the same, and the next also, until the irate little man, who had been considerably chaffed all the way down the line, made his way towards our athletic friend, whom for the nonce we will christen Billy Scooter. His stand was at the end of the hedgerow, bordering the marshes. No sooner did he see the officer coming towards him, note-book in hand, than he threw his gun over to a keeper, and bolted. The zealous officer was not to be baulked of his prey in that way, and when he observed this manœuvre, he crammed his hat over his eyes and gave chase to the fugitive. This was exactly what the cunning William had hoped for, and to encourage his pursuer, he put on an imaginary limp after jumping the first ditch. Seeing this, the officer attempted to negotiate the same obstacle, which he otherwise might not have thought of in cold blood; but he was not so successful as his forerunner, and landed splosh in the soft ooze up to his waist. Meanwhile, Scooter was limping painfully across the marshes.

Urged on by his apparent distress, the officer, who had now worked himself into a towering rage, followed wherever he led, utterly regardless of anything except

the one object of overtaking him. Having negotiated the nastiest and ugliest jumps he could find on the marshes, without inconvenience to himself, Scooter betook himself to the uplands, and led the panting, mud-stained, irate,



"He put on an imaginary limp . . . "—page 273.

and thorn-scratched representative of Her Majesty's revenues a fine dance over field, copse, and fallow.

Like the lapwing in the spring at nesting time, so soon as his pursuer showed any signs of abandoning the pursuit, the pursued feigned such pitiable fatigue and distress that he lured his follower still onwards, until at last, realising that the latter was beaten beyond any further endurance, he cantered easily homewards—or rather, in this case, to the farm-house, where it had been arranged we should take our lunch.

On his arrival we gave him an ovation, but the fun was still to come. Hardly had Scooter finished his first foaming horn of ale than the officer, without any ceremony, burst into the room.

"So at last I have run you to earth, have I?!" he panted out.

"Do you mean me?" said Scooter, in a very meek voice.

"Who else should I mean?" thundered the officer. "A pretty nice chase I've had of it. Look at me! Look at me!"

Scooter never smiled. He screwed an eye-glass into his left cheek, calmly surveyed him, and drawled out afterwards:

"Well, I don't see much to look at or to admire, now I have looked at you. But what is it you want, my good man?"

"Want! Why, your name and address, of course," he snapped.

"My name and address!" said Scooter. "Why, what on earth for?"

"What for? For shooting game without a licence, and refusing to give your name and address when demanded. Come, now, I'll have no nonsense! Out with it? I mean to have it!" he fairly shrieked, as he raised his voice higher and higher.

"Calm yourself, calm yourself, my dear sir!" replied the imperturbable William. "Now did you see me shoot any game? I'm not a good shot as a rule, and if you did, I should really like to have the opinion of one so experienced—"

"Look here, young man, this won't wash—"

"I hope your clothes will," added Scooter.

The shaft went home, and we fairly roared.

How long he would have continued to tantalise his victim we knew not, but one of our party, apparently a bit of a joker himself, explained to Scooter that the stranger with the steeplechasing propensities required to

see his game licence. Whereupon Scooter, who possibly had one eye on the lunch, replied:

"Oh, if that's all, why didn't the gentleman tell me so before, and I would have shown it to him at first."

This appeared to be the last straw; but when he proceeded further by leisurely opening his pocket-book, and producing the document in question, the poor little officer was completely nonplussed.

"Then why on earth did you run away?" he gasped.

"I run away! Nothing of the sort!" said Scooter. "That's merely my playful way of getting up an appetite for lunch," and, reseating himself at the table with a merry twinkle in his eye, he set to as though he meant it.

The poor little officer was completely sold, and nothing would comfort him—not even an invitation to join in the lunch, nor to take a brace of pheasants home with him.

Gun Licences.

With few exceptions, every person who carries a gun, except in a dwelling-house, or the "curtilage" thereof, must, unless he has a game licence, have a licence to carry a gun. The statutory provisions as to these licences are wholly contained in the Gun Licence Act, 1870, except that by the Customs and Inland Revenue, 1883, such licences now run from 31st July to the following 31st July, instead of, as formerly, from 31st March to 31st March. The cost of a licence is 10s.

"Curtilage" appears to mean the yard and buildings adjoining a dwelling within the same fence, and occupied therewith. In Tomlin's Law Dictionary (1810) it is defined as "a courtyard, backside, or piece of ground lying near, and belonging to a dwelling-house." An

orchard or yard separated from a dwelling-house is not within the curtilage, and any person using or carrying a gun therein, unless one of the exempted persons, is liable to the penalty of the Act if he had no licence (Asquith v. Griffon, 1884). We venture to think, however, if a dwelling-house stands within a garden or orchard which is surrounded by a ring fence, and not separated from the house, such premises would be held to be within the curtilage, although there is no reported decision to such effect.

The persons who are exempted from the necessity of taking out a licence are:

1. Persons in the naval, military (including territorial) and constabulary forces carrying guns when on duty or at target practice.

2. Persons licensed to kill game.

3. Any person carrying a gun belonging to another person who has a game or gun licence, and by the order and for the use of such person.

4. A gunsmith or his servant carrying a gun in the ordinary course of business, or testing it.

5. A common carrier carrying a gun in the course of his business.

6. The occupier of land using a gun for the purpose of scaring birds or killing vermin on such land.

7. Any persons scaring birds or killing vermin on land occupied by another, and by his order, provided such latter person himself has a gun or game licence (Sec. 7).

One often hears it stated that no licence is required to scare birds or kill vermin. This, as will be seen from the last paragraphs, is not quite correct. The occupier himself using a gun needs no licence, but if the task is given

to any other person, even though he be a son of the occupier, *one of them must have a licence*, it doesn't matter which.

It will be noticed that the Act says "scaring," not "killing" birds; therefore, strictly speaking, anyone who kills birds ought to have a gun licence. We have never heard of anyone setting up as a defence to a charge of being in pursuit of game without a licence that he was "scaring" his neighbour's preserved pheasants off his own corn, and we confess we should like to see the point raised. It would require a man with a good reputation to venture to put forward such a defence. Whether it would be successful, if the magistrates believed the assertion, we are hardly prepared to say.

"Vermin" is not defined by the Act. We have already dealt with the question of a gun licence for shooting rabbits, but we might add that if any reader inquires at the Post Office or any County Council offices whether he requires a licence to shoot rabbits on his land, he will be told that he does. The learned editor of "Stone's Justices' Manual" states, however, in a note to the Act, that Mr. C. S. Read, M.P., in 1884, was informed by the Board of Inland Revenue (which was, of course, then the authority) that "the Board would not prosecute in a case where a person, duly authorised by the holder of a game licence, shoots rooks, sparrows, or rabbits, for the protection of crops from their depredations." A County Council would doubtless assume the same attitude where the person giving the authority had only a gun licence.

The penalty fixed by the Act (Sec. 7) for carrying a gun without a licence for the first offence is £10, which the Justices may reduce to any amount they think fit

(Summary Jurisdiction Act, 1879, Secs. 4 & 53); for a second or subsequent offence to any amount not less than £2 10s. (Excise Management Act, 1827, Sec. 78).

An Inland Revenue officer or constable, or officer of constabulary, or other official authorized by the County Council, seeing any person carrying or using a gun (other than a member of the naval, military, or police force), may enter the land or premises where such person is (unless he be in a dwelling-house or the curtilage thereof) and demand the production of his licence. If the licence is not produced, the person's name and address may be demanded, and if that is refused such person may be straightway arrested, and conveyed before a Justice. The penalty for refusing the name and address is the same amount as for carrying a gun without a licence, but is in addition to the latter penalty, and it is no defence that the person actually has a licence if he has not produced it (Secs. 9 and 10).

If a person claims exception under clause numbered 3 above, as carrying someone else's gun (a loader or gun-carrier, for instance), then on demand by one of the persons above-mentioned, or by the owner or occupier of the land on which the gun is used or carried, he must give both his own name and address and those of his employer. If he refuses or gives wrong ones, he may be prosecuted for carrying a gun without a licence, and cannot then set up the defence that he is a servant.

If two or more persons in company carry a gun in parts, each one is to be deemed to carry a gun (Section 8).

Thus if two persons (poachers, for instance) are seen together, and on being apprehended the stock of a gun is found under one's coat, and the barrels down the leg

of the other's trousers, they may, if they have no licences in force, each be prosecuted. If, however, they are not seen together, the cases will fall to the ground, as the Act requires them to be "in company."

The Act is very comprehensive in its provisions. Thus a customer of a gunsmith trying a gun at a range, unless within the curtilage of a house, requires a licence. Many a man who has no licence in force goes down to one of the numerous shooting schools to be fitted for a gun. He is liable to be prosecuted under the Act. Again, a man who is just beginning to take up shooting goes and buys a gun. He naturally does this before he gets a licence, and, in the younger school of shooters, perhaps, in the joy of having a new toy he insists on taking it home himself instead of having it sent by the gunsmith's servant or carrier. As he carries it through the street (even though it be in a case) he brings himself within the Act, and is liable to a prosecution.

Not the least comprehensive clause in the Act is the definition clause, which we have purposely left to the end. This is as follows: "Gun includes a firearm of any description, and an air-gun, or any other kind of gun from which any shot, bullet, or other missile can be discharged" (Section 2).

Many people have imagined that they may carry a revolver or other pistol for their own protection without a gun licence. This is not so. Naturally, there are not many prosecutions for so doing, as few cases come to light, but no one carrying any such weapon is exempt except in a dwelling-house or its curtilage. Even toy pistols, such as are nowadays seen by scores in the shops of the miscellaneous goods class, and are, we believe, a

special line for cyclists, if (as nearly all are) they are capable of discharging a slug, they are within the Act (Campbell v. Hadley, 1876). This Act, it is not too much to say, is unconsciously infringed by thousands of people. However, for the future, there is less likelihood of such ignorance prevailing, as by the Pistols Act, 1903, gunsmiths and others are prohibited from selling firearms not exceeding nine inches in length, except on production by the purchaser of a gun, or game licence, or a written statement, signed by the purchaser and a police inspector, that the pistol is only intended to be used in a dwelling-house or the curtilage thereof, or that the purchaser is going abroad for not less than six months.

In a prosecution under this Act for using or carrying a gun without a licence, the authorised officer proves that the defendant is not on the list of licensed persons, and it then lies upon the defendant to prove that he falls within one of the exceptions (Section 7).

Anyone convicted of a trespass in pursuit of game in the daytime forfeits any gun licence he has, and must take out another for the remainder of the year if he wishes to preserve his right to use or carry a gun (Section 11).

This latter section also seems to have hitherto been often overlooked, chiefly for the reason that only an Inland Revenue officer could institute a prosecution for carrying a gun without a licence, and the police had no interest in securing convictions. Doubtless now that the police are charged with looking after infringements of the Act, each constable will be warned of those persons in his district whose licences have been forfeited.

Licences to Deal in Game.

We come now, naturally, to the second kind of game licence—that to deal in game. These licences apply to "game" only, *i.e.*, hares, pheasants, partridges, grouse, heath or moor game, black game and bustards. Any person may deal in woodcock, snipe, quail, landrail, or rabbits.

The licences required are two, or rather, the licence is an Excise licence, price £2, obtained at a Post Office, or in some instances at the County Council offices, on production of a prior licence granted by the District or Borough Council authorising the person named therein to apply for an Excise licence. The procedure is somewhat similar, therefore, to the granting of a publican's licence, and was formerly more so. For the Game Act, 1831 (Sec. 18), provided that the Justices in special session should grant licences to such persons as they thought fit to apply for and obtain an Excise licence to deal in game, but by the Local Government Act, 1894, (Sec. 27), all the powers of the Justices in this respect were transferred to the district and borough councils respectively.

There is no special form of procedure prescribed for the application to the Council for a licence. If the Council is satisfied as to the character of the applicant and the suitability of his premises a licence is usually granted as a matter of course. If notice of opposition is given to the Council, the latter will usually hear the objector and the applicant or their solicitors or counsel. The Council's decision is apparently final and not open to revision on points of law or otherwise. Application for a new licence can be made to the Council at any

time, but usually all applications for renewals are heard at some date in July or the beginning of August.

The person to whom a licence is granted must be a householder or keeper of a shop or stall within the district or borough, as the case may be. No innkeeper or victualler, or person licensed to sell beer by retail, nor the owner, guard, or driver of any mail-coach or vehicle used for the conveyance of mails, or any public conveyance, nor any carrier or higgler, nor any person in the employ of any of the above, can obtain a licence (Game Act, 1831, Sec. 18). This disqualification extends to a person having only a "grocer's" licence to sell beer (Shoolbred v. J. J., St. Pancras, 1890).

In the last mentioned case the well-known firm of Messrs. Shoolbred endeavoured to obtain a licence to deal in game; on refusal by the Justices to grant one a case was stated to the High Court as to whether they, being the holders of a grocer's licence under the Revenue Act, 1863, were disqualified, and it was held that they were, notwithstanding that grocers' licences to sell beer were unknown at the time of the passing of the Game Act.

We should like to see the question argued as to whether a director of a railway company is a person in the employment of the owner of a public conveyance, or of a person licensed to sell beer within the meaning of the Act.

A licence only extends to one house, shop, or stall, and any person wishing to deal at more than one such place must apply for a separate licence in respect of each (Sec. 18). Partners or a company require only one licence between them, not one for each individual (Sec. 21).

A licence to deal is required equally for game imported from abroad as for home-bred game (Customs and Inland Revenue Act, 1893, Sec. 2).

A licence is not transferable, and expires on the 1st July following the date on which granted. The form of licence requires that the person or persons to whom it is granted shall affix to some part of his or their house, shop, or stall, and keep there a board having painted on it in legible characters his or their Christian and surnames, together with the words "Licensed to deal in Game."

The Act expressly says (Sec. 26) that an innkeeper may sell game which he has bought from a licensed person to guests for consumption in his own house, though of what use this provision is (at the present day, at any rate) we confess we fail to see. An innkeeper or victualler generally sells his guests a meal, and not a pheasant, or bird, or whatever it may be as such. The clause in question however, shows how far-reaching the Act was intended to be.

Not only, however, must a person who wishes to deal in game be properly licensed, but he must take care to buy only of persons duly authorised to sell, *i.e.*, either from other licensed dealers or from persons having a game licence. Any *holder of a game licence (i.e.*, a licence to kill game) *may sell to a licensed dealer, but to no one else.* This is a provision of the law that many sportsmen are unacquainted with. How often do we hear of a sportsman obliging a friend with a few brace of pheasants or birds at wholesale price! Yet by so doing the former renders himself liable to a penalty not exceeding £2 for every head of game so sold, with

costs, and even the mere offering the game for sale is sufficient to bring the sportsman within the penal provision, although no actual sale be effected (Sec. 25), whilst the buyer, as we shall see below, would be liable to a heavier penalty.

Just as the holder of a game licence can only sell to a licensed dealer, so, of course, the latter can only buy of the holder of a game licence or another licensed dealer. If he buys of anyone else he is liable to the same penalties as the sportsman selling to an unlicensed person (Sec. 28). And if a decision of the Scotch Sheriff Court is correct, the penalty is incurred even if the dealer was not aware that the person of whom he was buying had no licence. It lies upon the dealer to ascertain that fact beforehand (Reg. v. Muirhead, 1887).

Again, the consumer (not having a dealer's licence) who buys game must be careful of whom he buys. In fact, the law is more strict on the consumer buying from an unlicensed person than on the seller, for the penalty for buying game from anyone other than a licensed dealer (whether the seller has a game licence or not) is not exceeding £5 per head of game bought. But in this case the buyer is allowed to plead one excuse, and only one, namely, that he bought *bonâ fide* from a person who had a board up in front of his house, shop, or stall, purporting to be the board of a person licensed to deal in game (Sec. 27). How many people, we wonder, when going into a shop to purchase game, trouble to look up and see whether the shopkeeper has a board with his name and the words "Licensed dealer in Game" on it?

With regard to hares, a person who is entitled as occupier to take ground game under the Ground Game Act, 1880, may sell to a licensed dealer without himself having a licence (Ground Game Act, 1880, Sec. 4).

Save, as last mentioned, a person having no licence at all is liable for selling or offering game for sale to a penalty not exceeding £2 (Game Act, 1831, Sec. 25), and if he actually sells game he is also liable under the Game Licences Act, 1860, Sec. 14, as amended by the Revenue (No. 2) Act, 1861, Sec. 17, to an Excise penalty of £20, which may be reduced by the Justices, for a first offence, to any amount, for a subsequent offence to not less than £5 (Summary Jurisdiction, 1879, Secs. 4 and 53, Excise Management Act, 1827, Sec. 78.)

A gamekeeper, having only a gamekeeper's licence, may only sell game on account of his master, and, of course, only to a licensed dealer (Game Act, 1831, Sec. 17).

In order the better to enforce the close times for killing game, the Act imposes penalties on the buying and selling and keeping of game after the expiration of certain periods from the commencement of respective close times. These provisions, contained in Section 4, are briefly as follows:—A *licensed dealer* may not buy or sell, or knowingly have on his premises or under his control, any bird of game after ten days from the commencement of close time for that class of birds (*e.g.*, partridges not after the 11th February). A person *not a licensed dealer* may not buy or sell any bird of game after the expiration of such ten days; after the expiration of forty days he may not knowingly have them in his possession or control, except birds kept in a mew

or breeding-place. The penalties are not exceeding £1 per head of game.

This part of the Act deals, it will be seen, with birds of game only, and it has been decided that the Act does not apply to game killed abroad, which a licensed dealer may keep and sell at any time (Guyer v. Reg. 1889). The sale of hares was not prohibited until 1892, when the Hares Preservation Act of that year made it unlawful to sell or expose for sale any hare or leveret between the months of March and July, both inclusive, under a penalty of not exceeding twenty shillings for every offence. The Act does not apply to foreign hares imported for sale (Sec. 3), which, like foreign killed birds of game, may be sold at any time.

It is imperative that every licensed dealer should have a board fixed as above mentioned. To sell without having such a board, or to affix a board so as to cover more than one house or shop, is punishable with a maximum fine of £10, and the like penalty is incurred by anyone who, by affixing such a board or exhibiting any certificate, or by any other device, pretends to be licensed when he is not (Sec. 28).

If the holder of a licence to deal in game is convicted of any offence whatever against the Game Act, 1831, his licence is forfeited (Game Act Sec. 22). Thus the licence would be forfeited on conviction not only of an offence under the sections relating to dealers in game, but for killing game without a licence or in the close seasons, or for trespass in pursuit of game in the daytime. But it would not be forfeited on a conviction for night poaching, as that offence is not dealt with by this Act, but by the two Acts we have before dealt with.

Whilst discussing the law upon this subject, a few comments upon the existing evils under the present legislature may not be considered out of place. We have seen that the law allows a game dealer ten days at the end of the season in which to dispose of his surplus stock, yet the same law allows him to sell game at any time after the stroke of the clock upon the day upon which the season for killing game commences, and it is a noteworthy fact that almost every game dealer throughout the United Kingdom is well stocked before the time for legitimate selling arrives. The question naturally follows, Where does this game come from? And who supplies it?

The only feasible answer to this which can for a moment be entertained is that all this enormous quantity of game has been killed during the prohibited season, excepting perhaps a certain amount which is taken from refrigerators, where it has been stored all through the summer by the dealers and held by them unlawfully. Therefore the same argument which gives to the dealers ten days in which to dispose of their surplus stock should be used to prevent them from selling any fresh stock of game at the commencement of a new season until twenty-four hours, or perhaps even forty-eight hours, after the season has actually commenced. This would allow the game to be lawfully killed, and give sportsmen who do most to encourage game rearing an equally good chance of securing top prices on the market for game with those who at present carry on a nefarious calling.

If a glaring example of the injustice we have referred to is required, we would recommend a visit to Leadenhall

Market early on the morning of the 12th of August. The visitor will have no difficulty in finding grouse, and if he consults his Bradshaw he will see at a glance that for them to have been taken legitimately is an impossibility —accepting as a fact that the birds were alive at daylight that morning.

With partridges and pheasants the same practice is followed, and for days before the 1st the poacher is on the alert. Should he come across favourite stubbles he visits them by night and sweeps them bare with his nets, whilst the pheasants he captures in ways too numerous to enter into here, but well known to those whose duties lie round and about our ancient homes of England.

With partridges another grievance calls for adjustment. The Game Acts only prevent the dealer from selling, or having in his possession, English game. Nothing is mentioned about foreign game. Now there are thousands of partridges coming from abroad, which are so similar to our English partridges that no one except an expert ornithologist (and he would have considerable trouble) could pick out one from the other. The artful dealer knows this, and when the close time draws near he purchases foreign birds and mixes them with his English birds, and on the 11th of February he forthwith proceeds to label all the birds "Foreign" or "Austrian," or some other name equally suitable to his purpose.

Several prosecutions have been instituted against dealers who were known to have bought largely from poachers and receivers, but the actions mostly ended in an unsatisfactory manner for those who commenced them, because of the very great difficulties experienced

in proving a case. The broker, or middleman, through whom the dealer buys his foreign game, can always come forward, and (if the dealer has laid his plans at all cleverly) truthfully swear that on such-and-such dates he consigned certain hampers of foreign game to the dealer accused. The hampers are traced from the broker to the dealer, and on these facts counsel, or a solicitor of any ordinary intelligence, can make out a strong defence, which is, to all intents and purposes, unanswerable. The game from abroad is unmarked; the dealer keeps no records of the birds sold, or if he does, he takes good care to lose, destroy, or fail to produce them; and he proves that he should have some foreign game in his shop.

Regarding hares, we have also much to complain of. Since the Ground Game Act, 1880, these sporting rodents have greatly decreased in numbers in England, Scotland, and Wales, "by reason of their being inconsiderately slaughtered, and owing to their marketable value it is important to provide for their protection." Thus runs the preamble to the Hares Preservation Act, 1892 (55 and 56 Vict. c. 8); but Section 3 of that Act in some measure cuts away the good intended to be introduced by the Bill. It enacts that this Act shall not apply to foreign hares imported into Great Britain, and there sold or exposed for sale. As a consequence, the enterprising dealer sails round the Act of Parliament, and, as we have before pointed out in the case of partridges, etc., he orders, from time to time, consignments of these animals from abroad, mixing them with his stock of illegally-gotten game at home, to his profit and to the discomfiture of the myrmidons of the law.

Dog Licences.

The owner of a sporting dog must of course take out a licence to keep a dog, price *7s. 6d.*, obtainable at the Post Office (Money Order Office) and it is almost unnecessary to say that a licence must be taken out for each dog.

Puppies under the age of six months (or in case of a hound not entered in the pack twelve months) are exempt. All dog licences expire on the 31st December, so that if a puppy (not a hound) attains the age of six months on, say, the 29th December, its owner is in strictness liable to pay the tax on that day, and another on the 1st January following. (Dog Licences Act, 1867; Customs and Inland Revenue Act, 1878, Sec. 17).

The licence is, of course, a personal one, and cannot be transferred if the dog is sold.

The penalty for keeping a dog without a licence is £5, or any less sum the justices think fit to impose for a first offence: for a second offence they may not reduce it to less than £1 5*s.*, except, apparently, where a police constable prosecutes, otherwise than as an authorized official of the County Council. (Dog Licences Act, 1867, Sec. 8; Summary Jurisdiction Act, 1879, Secs. 4 and 53; Excise Management Act, 1827, Sec. 78; and Customs, etc., Act, 1878, Sec. 23). The case of Murray v. Thompson, 1889, where the Divisional Court held that the minimum penalty of £1 5*s.* must be imposed, if a former offence was proved, even though the previous conviction was not alleged in the information or summons, was decided on a prosecution of an Excise officer and not of a constable.

The person in whose custody, charge, or possession, or in whose house or premises any dog is found or seen, is to be deemed the owner of the dog until the contrary is proved. (Dog Licences Act, 1867, Sec. 8.) Proof of the dog's age, if alleged to be exempt, also lies on the person charged. (Customs, etc., Act, 1878, Sec. 19.)

Anyone who keeps a dog not exempt, and fails to renew the licence for it on the 1st January, is liable to be prosecuted on the following day; but it is not usual to institute prosecutions during the month of January.

ADDENDUM TO CHAPTER XIX.

After this edition was issued, the case referred to in the footnote to page 304 was carried to the High Court, and as was anticipated, it was held that the provisions of the Game Act as to dealing in game included live game, and that a game preserver buying from an unlicensed game farmer was liable to a penalty. As a result of this case a clause was inserted in the Revenue Act, 1911 (Sec. 10), which exempts from penalty under Sec. 4 of the Game Act, 1831, a person buying, selling, or having in his possession, or under his control live game birds, providing the person in question is a licensed dealer, or has a game license, and the game is bought, sold, or kept solely for the purpose of breeding, or for sale alive.

CHAPTER XIX

GAME FARMS AND STOCK BIRDS



IT was in the spring of the year, when primroses brighten the woods and birds are allowed to carry on their domestic joys without molestation or interference, except from trespassers and poachers. It was a time when neither lawyers nor magistrates think of game cases, and we were the more surprised when a client was ushered into our private office, who complained that he had been summoned for being unlawfully possessed of game during the close season. Naturally, we extended to him that sympathy which the contemplation of prospective business caused to flow from our lips, after which, in order to get the facts of the case within our grasp, we asked to see the summons.

Yes; there was the charge clear, as our client had stated :—

IN the County of Poachington.

Petty Sessional Division of Rabbitburrow.

To Joseph Cockley, of Firthorpe.

WHEREAS information on oath has been laid this day by Samuel Spotem for that you, on the 20th day of March, 189—, at the parish of Firthorpe, in the said county, being then licensed to deal in game according to the Statutes in that behalf, unlawfully did knowingly have in your possession or control there certain birds of game, to wit, twenty pheasants the day last aforesaid, being after the expiration of ten days from the first day of February, contrary to the Statute in that case made and provided.

You are therefore summoned to appear, etc., etc.

Such was the form of summons our client handed to us, and it simply remained to hear his statement before we considered the most advisable course to pursue under the circumstances. In order that the reader may be equally well informed as ourselves, we would explain that this client was a most respectable man, but he had his peculiarities. As a song puts it, "it was not exactly what he said, but the nasty way he said it." In other words, he was a most sarcastic man, and his temper was not of the best. By profession he was the proud possessor of a game farm, and like many others in the same calling, he had no intention of erring on the side of "hiding his light under a bushel." His advertisements appeared in all the sporting periodicals of the day, with exaggerated accounts of the number of eggs produced in a season, birds sold, and general business done; so much so, that he became in the course of time credited with a larger income than those to whom he owed money could believe him possessed of, and, as will be seen, it was from

this cause entirely that the present case against him emanated.

As the advertisements of the "World's Game Farm and Aviaries" increased in number, and impressed upon those who read them the enormous amount of business done by Mr. Cockley—or, at least, as he fondly imagined they did —so did that gentleman swell with his own importance. This difference in his demeanour could not fail to attract attention. Amongst others to whose special notice it was brought to bear was an obscure but respected Government official, of the name of Samuel Spotem, whose duties were connected with the supervising of the Taxes Department of Her Majesty's Local Inland Revenue Office. That gentleman soon made up his mind on the course of action to be taken. Seeing that Cockley claimed exemption and paid no income tax, he quietly put the machinery in motion, and in due course our friend received a coloured printed notice that he was assessed at £1,000 per annum.

On receipt of this document Cockley was furious, and selecting a stout, pliable walking-stick, he paid a visit to the offices of Mr. Spotem to give that gentleman a bit of his mind. Samuel Spotem was not unprepared for his coming, and received him in the most affable manner, expressing great surprise at what he heard, and contrasting the present remarks of Cockley to the statements appearing daily in his advertisements. Cockley, thinking that if he proved what his income was the figures would be known all over the neighbourhood, contented himself with abusive language and veiled threats, and actually went so far as to pay the tax of £33 6s. 8d. yearly rather than appeal, but he swore to be avenged.

Whenever, after this little private scene, and wherever he met Spotem, he insulted him, and he would have gone any length to have done him a nasty turn. As an instance of this, knowing that Spotem drove into the country on Saturday evenings always by the same route, at a certain hour, and down a certain lane, he broke open a drain which ran under the road, whereby Spotem's pony was thrown down, got a broken leg, and had to be shot, whilst Spotem was thrown out and considerably shaken. Of course, it could not be proved that Cockley did it, but as he was the first to assist Spotem up, and seemed to have been watching the accident from some neighbouring ambush, there was little doubt as to who the real culprit was.

Shortly after this Spotem suffered another annoyance. One night the main windows of his house were broken by slugs from an air-gun. Now Spotem knew perfectly well who his hidden enemy was. He was also well aware of the reason of his persecution, which, in a measure, he had brought upon himself; but he was a cunning schemer; he believed in the maxim "that everything comes to him who waits," and he determined to sail to windward of his opponent in the course of time. For many a long night he lay awake, racking his brains to find out means of bringing retaliation to bear upon the overbearing Cockley. Many schemes he thought of, but none would act. Having heard that the Game Acts were in a tangled skein, he bought the latest edition of "Oke" and studied it every evening, hoping that there might be some particular section which had escaped Cockley's attention, whereby Spotem could strike; if indirectly, so much the better.

Thus for months the feud existed between these two sworn foes, Cockley using violence or any possible or secret means that lay in his power to annoy and harass Spotem, but guarding himself the while with the greatest care against any possible detection; Spotem waiting, studying, and watching for a favourable opportunity to catch his adversary napping or tripping.

Affairs were in this state when our client called upon us and handed us the summons, as before mentioned, and having heard the greater part of this narrative unfolded at considerable length—(excepting that when told to us bare facts were mentioned, and no confessions of guilt were indulged in; but we well knew, from the manner in which our client expressed himself, and by putting two and two together, what the real facts of the case were)—

"Well, Mr. Cockley," we exclaimed, "and so you are accused with being the unlawful possessor of game! What game have you (if any) in your possession at present?"

"Why, what I always have had for years—800 pheasants in mews for laying, for the purposes of my trade or business."

"Hum!" we ejaculated, passing our hand thoughtfully over our brow; "800 pheasants in mews. Well, you're only charged with being in unlawful possession of twenty. Perhaps you have twenty somewhere else?"

We confess we said this to gain time to collect our thoughts and turn the matter over in our mind, rather than in any expectation of an affirmative reply, for we were for the moment nonplussed. It seemed to us so natural for the owner of a pheasant farm to have

pheasants in a mew that we hardly saw where the offence could come in. We were not therefore surprised when our client replied:

"No; they're all kept just the same—all in mews, the whole 800."

"And all alive—*i.e.*, you've no dead game?" we queried.

"Yes, sir, all alive and healthy; and what's more, I very seldom have many die, and when I do, of course they're buried at once," was the answer.

"Well, Mr. Cockley, a lawyer is nothing without his book. Let's see what we can find on the subject." And we went to the shelves and reached down a well-thumbed "Oke" and Chitty Statutes, with the title of "Game," and turned over first the one and then the other. "Here we are, Mr. Cockley," we said at last. "This appears to be the section you are charged under—Sec. 4 of the Game Act, 1831, the first part of which I will read to you: 'And if any person licensed to deal in game by virtue of this Act as herein mentioned shall buy or sell, or knowingly have in his house, shop, stall, possession, or control, any bird of game after the expiration of ten days, one inclusive and the other exclusive, from the respective days in each year on which it shall become unlawful to kill or take such birds of game unlawfully, as aforesaid . . . every such person shall, on conviction, forfeit and pay for every head of game so bought or sold, or found in his house, shop, stall, possession, or control, such sum of money not exceeding £1, as to the convicting justices shall seem meet, together with the costs of the conviction.' How do you get over that, Mr. Cockley?"

"Well, sir, I should say as that's nothing to do with me; only for those who are licensed to sell dead game to eat."

"No doubt," we replied, "the section was intended for such persons, but still it says 'licensed dealers.' If you think the section and Act refer only to dealers in dead game, why should you have a licence?"

"Why, the reason is that some years ago I was warned by the Inland Revenue Office—not this fellow Spotem, but his predecessor—that if I didn't take out a licence I couldn't sell game."

"Your friend, the Inland Revenue Officer, was quite right," we answered. "There was a case tried some years ago on that very point. Ah! here I see it's referred to in Stone's 'Justice's Manual'—Harnett v. Miles, 1884. We'll have a look at it." And we reached down and opened a volume of the "Justice of the Peace Reports." "Yes, in that case (it was in 1884) I see Mr. Miles carried on a business similar to yours. He bred pheasants under hens, and sold them to game preservers, but he hadn't a licence; so a wily Inland Revenue officer wrote from his private address, asking the price of two cock pheasants, which, Mr. Miles said in reply, would be £1. Mr. Inland Revenue Officer sent the money, and Miles sent the cocks. This wasn't in the close season, by the way, and then Mr. Officer prosecuted Miles for selling without a licence. Miles pleaded that, as he reared the pheasants under hens, and clipped their wings a little to prevent their flying too far, they were tame birds, and that he couldn't be expected to have a licence to sell tame pheasants. The magistrates agreed with Mr. Miles.

and dismissed the summons. The Inland Revenue, however, got a case stated, as it is called, to the High Court. They generally do if they're beaten. It doesn't cost their officers anything to go to law; and the judges—Mr. Justice Mathews and Mr. Justice Day—said that a pheasant was a pheasant all the world over, whether it was tame or not, and ordered the magistrates to convict Mr. Miles for selling without a licence. So you see you do require a licence."

"Yes, that seems all very well," said Mr. Cockley, "but it don't seem to me, if you'll pardon my saying so, to be quite on the point. I'm not charged with selling pheasants, but only with having them in my possession."

"Quite so, Mr. Cockley. We were only showing you that you could not in any way escape the licence. Now, being a licensed dealer, you are subject to the same law as every other licensed dealer, whether he sells dead game for the table or live game for the woods. It was decided many years ago—let me see; oh yes, Loome v. Bailey was the case, 30 Law Journal Reports, M.C. p. 31—that would be—yes, in 1861—that the whole of Section 4, of which I read you a part, applies to live game, and therefore a licensed dealer must not have live game in his possession after the ten days' limit."

"Then, sir, you think I shall be convicted and lose my licence," said our client rather ruefully; "but that'll mean putting an end to all game farms in the country."

"I certainly think you ought to be," we replied. "You see, the words are so general. You are a licensed dealer, and you have the pheasants in your possession. However, there is just a chance we may get you off. You leave it to me to do the best I can."

Our client was silent for a few moments, then burst into a laugh, and slapped his knees two or three times as if in great glee.

"I've got it," he almost shouted, "I've got it! If I get convicted, I know what I can do. That idiot Spotem's father keeps a little pheasantry—keeps some pheasants under wire-netting—gold and silver pheasants, and ordinary ones too. I'll prosecute him, that's what I'll do!"

"Not quite so fast, my friend," we interrupted. "Is Mr. Spotem, senior, a licensed dealer?"

"No, of course he ain't—only keeps 'em for pleasure."

"Well, then, I'm afraid it's a case where what's sauce for the goose isn't sauce for the gander."

"How's that?" asked Mr. Cockley, his mirth subsiding at once.

"Well, you see, this section has a separate clause for unlicensed persons. I didn't read the whole section, you know—the second part of it prohibits unlicensed persons from buying or selling except within ten days, just as it does licensed dealers; but with regard to having birds in their possession it is different. In the first place, they are allowed forty days as against the dealers' ten days, and, even after the forty days, they are still allowed to keep birds in a mew or breeding-place. Mr. Spotem senior's wire-netting arrangement would clearly be a mew, and therefore he could not be prosecuted."

Our client's jaw dropped entirely at this, but he revived again presently on our assuring him there was just a chance of his not being convicted himself, and he presently left us with:

"Well, you must do the best you can for me, Mr. Six-and-Eight."

The Court day at length came round, and Mr. Spotem appeared with all the pride and glory of his official position, and himself proved the facts on which his summons was based, and quoted the various cases, and "confidently asked for a conviction." The magistrates looked extremely surprised as the case unfolded itself. Here was something quite new to them, but still they evidently did not see their way out of the difficulty when we rose to address them.

We were obliged, of course, to admit the facts, but we pointed out that a conviction, if consistently followed up, would necessarily abolish all game farms, and that this further consequence would ensue—a serious one for game preservers: Many of those who were licensed to deal in game were gentlemen in a large way of business, and of considerable standing, and had game preserves of their own, not for the purpose of supplying their business establishments, but for their own sport and pleasure, and it would be impossible for any such gentlemen hereafter to rear any game. It might be that their game preserves were many miles from their place of business, but still they were licensed dealers, and they would have game in their possession or under their control, although not at the place where they were licensed to sell; and if the present defendant was convicted, so might these gentlemen be. Now the Act provided for a licence for a house, shop, or stall only, and the defendant's licence was for the house on his farm, and for that house only. The pheasants were not in the house—*i.e.*, they were not on the licensed premises,

and the defendant ought no more to be convicted than ought, say, one of a large firm of game dealers who had a sporting estate fifty miles from his place of business. In this way we argued for our client Mr. Cockley, and the magistrates, "after mature consideration," dismissed the case.

Mr. Cockley was in great glee, and insisted on breaking a bottle at the nearest hotel in honour of Spotem's defeat.

Mr. Spotem, as we had anticipated, applied for a case to be stated at the High Court, but the matter was dropped after representation (as to the effect of a conviction) was made to the head of the department. Since that time Mr. Cockley has carried on his business in peace, and has even got on sufficiently good terms with Mr. Spotem to get his income tax reduced.

In case any reader should be desirous of having any reference to the decision of the Inland Revenue department not to prosecute the matter further, he is informed that although Mr. Cockley and Mr. Spotem are very real persons (under temporarily assumed names), and though their long-standing feud did end in a summons issued by the latter in his official capacity, it was not for the offence stated above. We took the liberty of altering the summons that was actually issued in order that we might discuss the case. We do not know that there ever has been a decision on this point, but we believe we have pretty accurately stated the effect of the section—viz., that it is large enough to include game farm keepers and licensed dealers who have private sporting estates, and an ordinary bench of magistrates would hardly convict;

but that, if such a case were taken to the High Court, the judges would feel bound to do so.

Since the above chapter was written, Mr. Willis Bund, the learned editor of the current edition of "Oke's Game Laws," has published a small work on this particular subject, in which he deals at length with this question, and we take the liberty of quoting the following from his booklet: "This brings us to the conclusion that all sale of game by anyone, whether a licensed dealer or not, during close time, is illegal; but that a person *not* a licensed dealer may have game in a mew or breeding place in his possession or control during close time, but may not sell it. This seems to be the law, and if it be so, it makes the position of the game-farmer one of great difficulty. As already shown, he cannot, unless he takes out a licence to deal in game, legally sell game to the public. If he takes out a licence to deal in game, then he brings himself within the terms of Section 4, and it becomes illegal for him to have game in his possession during the close time, even in a mew or breeding-place, since it is in his possession or control. . . . . Some day . . . there will be a conviction and an outcry; then it may be the law will be altered, and put on a footing to meet the present state of things." ("Game Farms and the Game Laws," pp. 15 and 20.)

NOTE—Some game farmers have up to the present carried on their business without taking out a licence to deal in game; thus, apparently (as the cases now stand), escaping liability for having possession of game in the close season only to render themselves liable to prosecution for another offence. As we are going to press we have information of a conviction of an unlicensed game farmer in Buckinghamshire, and we understand the cost is to be carried to the High Court.

CHAPTER XX

The Protection of Wild Birds

The Wild Birds Protection Act, 1880, enacts that "any person who, between the first day of March and the first day of August in any year, shall knowingly and wilfully shoot or attempt to shoot, or shall use any boat for the purpose of shooting or causing to be shot, any wild bird, or shall use any lime, snare, net, or other instrument for the purpose of taking any wild bird, or shall expose or offer for sale, or shall have under his control or possession after the 15th of March, any wild bird recently killed or taken, shall be liable, in case *of any wild bird included in the schedule to the Act* to a penalty not exceeding £1 for every such bird, and in case of a bird *not included in the schedule*, to a reprimand for the first offence, and to a penalty for each bird not exceeding 5*s*. for any subsequent offence. Owners or occupiers of land, or their authorized agents killing or taking on such land any wild bird not included in the schedule are exempted from the Act (Sec. 3). A person found offending against the Act may be required by any other person to give his name and address under an additional penalty for refusal or evasion of not exceeding 10*s*. (Sec. 4).

The Wild Birds Protection Act, 1881, after repealing a certain exception contained in the principal Act, enacted

that "a person shall not be liable to be convicted of exposing, or offering for sale, or having the control or possession of any wild bird recently killed, if he satisfies the Court before whom he is charged (1) that the killing of such wild bird, if in a place to which the said Act extends, was lawful at the time when and by the person by whom it was killed; or (2) that it was killed in some place to which the said Act does not extend, and the fact that the bird was imported from some place to which the said Act does not extend shall, until the contrary is proved, be evidence that the bird was killed in some place to which the said Act does not extend.

The schedule, as amended by the Act of 1881, is printed at the end of this chapter.

In an earlier edition of the book it was pointed out how absurd it was that there should be no provision in either Statute for forfeiting the bird or birds illegally killed; and we suggested that the legislature, when it was again set in motion, should go a step further and include the forfeiture of the implements of destruction used at the time of the offence, as well as the birds killed. It is gratifying to find that the suggestions then made have to a great extent been carried out. The Wild Birds Protection Act, 1896 (Sec. 4) authorized the forfeiture of any trap, net, snare, or decoy bird used for taking any wild bird, which the setter or user has been convicted of taking; whilst the Wild Birds Protection Act, 1902, empowers the Court, in addition to imposing any other penalty, to order any wild bird or wild bird's egg in respect of which an offence has been committed to be forfeited and disposed of as the Court think fit. (As to offences with regard to eggs see below.)

It will be seen that the principal Act is somewhat loosely worded with regard to the offence of having possession of a bird recently killed. What do the words "after the 15th day of March" mean?

If they mean after the 15th of March in any year and before the end of the year, it would seem that a man found, say, on the 14th March with a recently-taken wild bird in his possession is not liable to prosecution, although it may have been unlawfully taken after the 1st March. It has been held that a bird may be said to have been recently taken though it has been in the defendant's possession for three weeks (Green v. Carstang, 1902). In a more recent case the Divisional Court held that the magistrates ought to convict a person who was proved to have had in a cage on the 30th July some larks, which in the opinion of a witness for the prosecution, who was not contradicted, were that year's birds, and from their wildness appeared to have been recently taken (Hollis v. Young, 1908, reported in L.R. and L.T.R., in 1909).

On the other hand, if the prosecution is for having possession of a recently-taken bird after the 1st August in any year, the exact construction of the clause is less important if the bird is dead. For, at any rate, the prosecutor must prove not only that it was recently taken, but must not show that the taking was so recent as to have been after the 1st August, otherwise he himself brings the defendant within the exception contained in the Act of 1881. It must be noted that the Act of 1880 applies to the possession of birds recently *killed* or *taken* (that is, alive or dead), whilst the exception in the

Act of 1881 applies only to birds that have been *killed.* It seems to follow that if a person is prosecuted for having in his possession, say, in January (for example) a recently-taken live bullfinch, there can be no defence whatever if the Act is interpreted literally, although the taking of the bird was not unlawful. This result is absurd, and it would therefore seem not improbable that the Court, when such a case arises, will construe the words "after the 15th day of March" as having reference to the preceding period for unlawful taking, and that the words "and before the 1st day of August" ought to be read into the section after the words "15th day of March." The section as it stands is most unsatisfactory.

The schedule of wild birds includes, as will be seen, the names of several birds which, if shot in England, are worth in the flesh three to four pounds and upwards, according to the keenness of the buyers, and the maximum penalty for killing them is only £1. Therefore, it cannot be wondered at that, when the news of the arrival of a party of spoonbills, avocets, or such-like birds, gets wind, all the professional gunners of the locality are quickly in evidence, and the only chance the watchers have of frustrating their designs is not by relying upon the laws of the land, but by the more practical method of "shooting up the fowl or birds," which expression, when interpreted from gunners' *patois*, means frightening the birds which another is stalking by firing guns from a distance, before the stalker can come up within range of his quarry. This is a practice much in vogue on some punting grounds, where jealousy exists between rival gunners or between strangers and natives. This

paragraph was written long before the passing of the Act of 1902, and, naturally, the shooting of these valuable birds has been to some extent checked by the knowledge the discovery will lead to a forfeiture of the birds as well as a penalty. It is a pity the Statute did not empower the Court to also forfeit the gun used to shoot any bird named in the schedule, at any rate on a second conviction But, again, the old proverb of catching your hare before cooking it, is very applicable to wild bird poachers.

It is well known amongst sportsmen and shooters that the poacher prefers the use of nets, snares, gins, and the like implements to the more noisy and tell-tale firearm; also that birds such as plover, larks, and the like, are more easily taken at daybreak, or in the twilight, than at any other time; also that where these birds congregate in sufficiently large numbers to make it worth while attempting to catch them, the owners and occupiers of the land are equally interested in their capture. Now, the officers of the law may be astute in their own peculiar way, and their vast comprehension may be said to commonly extend to the difference in appearance between a partridge and a pheasant, but there is not one officer in the force in a thousand who would know what a lapwing was, nor be able to tell whether it was a different bird to a peewit or a plover, whilst the mere mention of red-shanks, green-shanks, or plovers'-pages would cause them to apply for the production of the court interpreter. How, then, can they be expected to know the habits of these and other birds? It naturally follows that, without this knowledge, a

possibility of catching the artful poacher napping is very remote indeed.

It might be suggested that there are watchers appointed to prevent this, but watchers are only employed on large saltings and breeding grounds, where the gunner would only go on the chance of obtaining rare specimens, the value of which far outbalances the penalties enforceable against him.

Admitting that it is arguable that the shooter of a bird may have difficulty in disposing of it, then the stubborn fact arises that taxidermists and collectors are so eager to buy rare English-shot specimens that they blink at the majesty of the law, and purchase surreptitiously; whilst, like the dealer in game, the taxidermist who purchases generally has others in hand, so that, if a case were preferred against him, the chances would be greatly in favour of the case being dismissed. Then, again, neither watchers nor policemen patrol the vast expanse of marsh and moorland where the wild birds so often meet their doom. Keepers, it is true, may have interests there, but a shepherd's guise often allays suspicion, and the birds suffer, whilst hearts cannot grieve for what is neither known nor seen.

Sec. 9 exempts from the Act of 1880 the Island of St. Kilda, and also gives power to a Secretary of State in England or the Lord Lieutenant in Ireland on application of the Justices of a county, to exempt any county, or parts of a county, from the operation of the Act, as therein stated. (The exemption of St. Kilda has been repealed, and the Act, with certain specified exceptions and additions, has been

extended to that island by the Wild Birds Protection (St. Kilda) Act, 1904.)

This provision in the Act was not generally taken advantage of throughout the country; indeed, few people knew of its existence until eight years later, when the Local Government Act, 1888, was passed by Sec. 3 of which Act the powers of the Justices were transferred to the County Council, who will now make application; and it is worthy of comment to note that only in Anglesea, Essex, Huntingdonshire, and Northumberland were any orders made prior to 1888.

There is another provision in the Wild Birds Protection Acts, which, however well it may read in theory, works in a most extraordinary manner in actual practice. We refer to Sec. 8 of the Act of 1880, by which "one of Her Majesty's principal Secretaries of State as to Great Britain, and the Lord-Lieutenant as to Ireland may, upon application of the Justices in quarter sessions assembled (now the County Council) of any county, by order extend or vary the time during which the killing and taking of wild birds, or any of them, is prohibited by this Act; after the making of which order the penalties imposed by the Act in respect of such wild birds shall in such county apply only to offences committed during the time specified in such order, and the order for the extension or variation of such time shall be published, if made by the Secretary of State, in the *London Gazette*, or, if made by the Lord-Lieutenant, in the *Dublin Gazette*.

Further, by the Wild Birds Protection Act 1894, a Secretary of State, upon the application of any County

Council, may make orders of the following nature with regard to the whole county or any part or parts of it, or any specified place in it :—

(*a*) Prohibiting the taking of all wild birds' eggs in any particular year or years.

(*b*) Prohibiting the taking of the eggs of any particular species of wild bird.

(*c*) Applying the Act of 1880 to any additional species of wild bird as if the same had been included in the schedule to that Act. Where an order as to eggs has been made the penalty for infringing the Order is not exceeding £1 an egg, and as we have seen under the Act of 1902 the eggs can be forfeited.

It is the duty of the County Council to publish any orders made by the Home Secretary under any of the Acts, but a person may be convicted for an offence against such an order, although it has not been published (Duncan v. Knill, 1907).

But now we come to an absurdity in the practical working of these enactments. One county or one part of a county will agitate, and an order will be made extending the close time, scheduling additional birds or protecting eggs; whilst an adjoining county or even another part of the same county may remain inactive and no order will be made concerning it. The author knows a striking example of this where all the marshes on one side of a river, and half the river, as far as mid-stream, were protected on the application of the County Council, whereas all the marshes on the other side of the river, and the other half of the river as far as mid-stream, were not protected at all. Fowl and wild

birds used or frequented both sides of the stream equally, with a result that the shooters on the unprotected marshes shot all the birds before the shooters on the protected marshes had a look in; and this is the case in many counties.

A glaring illustration of the inconsistencies referred to has recently (1909) been disclosed in a circular, addressed by the Field Sports and Game Guild to the various County Councils of England, urging them to petition the Home Secretary to cancel the different orders now in force with regard to the prohibition of woodcock and their eggs, and to issue a new order of general application. To take only a few examples mentioned in the circular:—The order governing the North Riding of Yorkshire is different to that governing the East Riding, and this again differs from the orders in force in the West Riding. The protection granted in Norfolk differs from that in Suffolk (West), whilst in the Liberty of Peterborough a different order is in force to that which governs the County of Northampton, of which the Liberty geographically forms part.

Gloucester and Devon both have orders protecting the eggs, whilst the intervening County of Somerset has an extended close time for the woodcock themselves, but no protection for eggs. And so the list might be extended.

Protection Acts should be made general throughout the United Kingdom, and no harm could be done if the close time was extended all round, whilst no dealer should be allowed to have in his possession, or expose for sale, any game or birds whatever during close time, whether English *or foreign*, excepting only what he chose to place in cold stores *during the season*.

The placing upon any pole, tree or cairn of stones or earth of any spring trap or gin, or any similar instrument calculated to cause bodily injury to any wild bird, and the taking or attempting to take any wild bird by means of a hook or similar instrument, is now punishable under the Wild Birds Protection Acts of 1904 and 1908, with a fine of not exceeding £2, or for a second offence not exceeding £5.

The following is a copy of the Schedule to the Act of 1880, the lark being added by the Act of 1881. It will be remembered from what has been said before, that as to these birds, they are protected from 1st March to 1st August, except in any counties where varying orders have been made.

American Quail.
Auk.
Avocet.
Bee-eater.
Bittern.
Bonxie.
Colin.
Cornish Chough.
Coulterneb.
Cuckoo.
Curlew.
Diver.
Dotterel.
Dunbird.
Dunlin.
Eider duck.
Fern-owl.
Fulmar.
Gannet.
Goatsucker.
Godwit.
Goldfinch.
Grebe.
Greenshank.
Guillemot.
Gull (except black-headed Gull).
Hoopoe.
Kingfisher.
Kittiwake.
Lapwing.
Lark.
Loon.
Mallard.
Marrot.
Merganser.
Murre.
Night-hawk.
Night-jar.
Nightingale.
Oriole.
Owl.
Ox bird.
Oyster catcher.
Peewit.
Petrel.
Phalarope.
Plover.
Ploverspage.
Pochard.
Puffin.
Purre.
Razorbill.
Redshank.
Reeve, or Ruff.
Roller.
Sanderling.

Sandpiper.	Smew.	Tern.
Scout.	Snipe.	Thicknee.
Sealark.	Solan goose.	Tystey.
Seamew.	Spoonbill.	Whaup.
Sea parrot.	Stint.	Whimbrel.
Sea swallow.	Stone curlew.	Widgeon.
Shearwater.	Stonehatch.	Wild duck.
Shelldrake.	Summer snipe.	Willock.
Shoveller.	Tarrock.	Woodcock.
Skua.	Teal.	Woodpecker.



CHAPTER XXI

CLOSE TIMES, POISON, MANORS, WARRENS

Close Times for Game



IT may perhaps be advisable to say a few words on this question although the law on the subject is considered to be pretty well known. That wonderful trait of human character which the Americans have so appropriately dubbed "cussedness," is present to a greater or less degree in so many of our race that it may almost be said to be an innate failing of man that he should desire to break the laws which the wisdom of his chosen legislators have ordained for his guidance. To do something which may be within the spirit, yet outside the letter of a statutory prohibition, is a joy and a pleasure to many if they will but confess it. The regulations as to close times, however, are so very clearly defined that there are but few loopholes of escape.

The close times for England, as defined by the Game Act, 1831 (Sec. 3), are as follows :—

For all "game" (which, of course, includes hares), Sundays and Christmas Day every year.

For partridges, between 1st February and 1st September.

For pheasants, between 1st February and 1st October.

For black game, between 10th December and 20th August, except in Somerset, Devon, or the New Forest, in which districts the time is extended to 1st September.

For grouse, between 10th December and 12th August.

For bustards, between 1st March and 1st September.

These dates are exclusive—*i.e.*, the killing is lawful on both the first and last day mentioned.

There is, however, an essential difference between the Sunday and Christmas Day offences and the offence committed in the close seasons proper. It is perfectly lawful to shoot *at* a partridge on the 31st August unless that day happens to be a Sunday, so long as the shooter takes care not to kill it, for the statute only prohibits the killing or taking during the close times proper. It does not seem to matter, moreover, if the "sportsman" who tries to get a little mild excitement in this way begins even before the 1st August or other date when the Wild Birds Protection Act is in force in the particular district, for, under the latter Act, the owner or occupier of land, or any person authorized by one of them, is exempted from the operation of the Act for all wild birds not scheduled, and no birds of game are included in the schedule, though snipe and wild duck are.

It follows, therefore, that anyone may lawfully shoot at a bird of game (so long as he doesn't kill it) in, say, the

months of March or July, whilst shooting at a lark in the same month renders the erring sportsman liable to a reprimand by the magistrates and the payment of costs, and for a second or subsequent offence a fine of five shillings and costs.

Although to create the offence last considered the game must be "killed or taken," it is not necessary, of course, that it should be shot, or even killed. To take a pheasant alive in the close season is just as much an offence as to shoot it, and even where a pheasant is accidentally caught in a wire, and the occupier takes it out alive, he may not kill it or even take it away with the object of killing it (Watkins v. Price 1878). It would almost seem as if the catching of pheasants to inclose in a mew, as is done on every sporting estate, were within the letter of the law, but the judge laid it down in the last-named case (in effect) that the taking of a pheasant with the object of subsequently restoring it to its liberty was not an offence within the statute.

We have already in a previous chapter dealt with the offence committed by a licensed dealer in having possession of game in the close season.

With regard to Sundays and Christmas Days, the law, as above suggested, is different. Not only is the killing or taking unlawful, but the penalties of the Act are incurred by "using any dog, gun, net, or other engine or instrument for the purpose of killing or taking any game."

It has been decided that a snare is an "engine" within the meaning of the Act. Moreover, the snare need not be actually set on the Sunday to render the offender liable, if it is set on Friday or Saturday, and left in its place on Sunday with the intention of catching any hare that may

happen to go into it, *the setter is liable* to the penalty of not exceeding £5 and costs (Allen v. Thompson 1870).

It would seem from this decision that no one has a right to keep snares set in week in and week out; to be absolutely safe the setter must take them up every Saturday before midnight, and reset them again after midnight on Sunday.

There is no close time for rabbits, so, of course, if a snare is set for rabbits and a hare is caught by accident, no offence is committed; but if the hare is taken before it is killed it must be released, and there may be some difficulty in satisfying a bench of magistrates in some cases that the snare was set for rabbits, and not hares.

Proceedings for an offence under Section 3 must be commenced within three months of the offence.

Section 5 of the Hares Act, 1848, enacts that nothing in that Act shall make it lawful to use firearms by night for the purpose of killing game or hares, but it is nowhere declared to be an offence to kill game to which one is lawfully entitled by night, except that an occupier is, by the Ground Game Act, 1880, forbidden to use firearms at night. Hares may of course be killed at any time of the year, except Sundays and Christmas Day, but, as mentioned in a previous chapter, they must not be sold or exposed for sale between the 1st March and 31st July both inclusive.

Laying Poison for Game.

The section of the Game Act, 1831, which deals with close times, further provides that any person who with intent to destroy or injure any game, puts, or causes to be put, any poison or poisonous ingredient on any

ground, whether open or inclosed, where game usually resort, or in any highway, shall be liable to a penalty not exceeding £10 and costs.

Further, the Poisoned Grain Prohibition Act, 1863, imposes a like penalty on any person putting on, or sowing in any ground (otherwise than for agricultural purposes) any grain, seed, or meal, which has been steeped in, or mixed with poison, so as to render it poisonous, and calculated to destroy life. The sale of such grain is also prohibited, unless for agricultural purposes.

Proceedings under the section quoted of the Game Act must be commenced within three months of the offence; under the Poisoned Grain Prohibition Act within six months.

Manors.

Lords of manors and their gamekeepers have certain rights and privileges not shared by ordinary owners or occupiers of land and their gamekeepers. A manor or lordship, be it known, is what the law calls an incorporeal hereditament, comprising certain more or less obsolete rights of jurisdiction over a district, the whole of which was the property of the first lord of the manor, who granted parts out to tenants to cultivate, reserving his own demesne land, and also the wastes over which tenants were given a right of pasturage. Every manor had its baronial court for the trial of disputes and the punishment of offences, the rendering of homage, etc., etc.—an institution which, where it still exists, has resolved itself in most cases into a yearly or less frequent gathering of the manor tenants at, in many cases, a convenient public-house, where the steward receives the yearly quit rents and dispenses refreshments

to the tenants. A reputed manor is one which, owing to there not being two tenants or suitors sufficient to making a homage, has fallen into desuetude.

The wastes of a manor are vested in the lord, and he has the right of taking game thereon. These wastes may be common lands, on which the tenants, or some of them, have rights of pasturage, or what may be called absolute wastes, such as the foreshore of the sea or an estuary, in cases where such foreshore has been granted to the lord by the Crown. Except, however, on the wastes, or on what were formerly wastes, the lord has, as a rule, no special right of taking game within the manor; but he seems in time past to have been looked on as a sort of guardian of all game, and also, to a certain extent, of the Revenue laws within the boundaries of the manor for the benefit of the various landowners. Thus, by the Game Act, 1831, the lord of any manor or reputed manor is authorized to appoint by writing under hand and seal one or more persons to serve as gamekeepers, to preserve or kill game within the limits of the manor for the use of the lord, and to authorize such gamekeepers within the manor to seize and take for the use of the lord all such "dogs, nets, and other engines or instruments for the killing or taking of game" as shall be used by any person who has no licence to kill game (Sec. 13). And by another section the lord is authorized to depute the same powers to gamekeepers of other persons (Sec. 14). All such appointments, however, must be registered with the Clerk of the Peace for the county before being of any effect (Sec. 16).

The sections quoted do not authorize the seizure of guns, but only of dogs, nets, or other engines or

instruments, such, for instance, as snares; and they must be used for the purpose of taking game (not rabbits, woodcock, etc.) It is only while they are being so used, or immediately afterwards, that they may be seized. It seems that as the Statute authorizes the seizure for the use of the lord, the lord's gamekeeper may shoot an unlicensed person's dog which is being used for the purpose of taking game within the manor, since the Act of seizure transfers the property in the dog to the lord (see Kingsnorth v. Bretton, 1814) and the lord (or his gamekeeper) can then do as he likes with it.

A lord of a manor or reputed manor, or his gamekeeper, may arrest any person found committing an offence under the Night Poachers' Act, 1828, within the limits of the manor (Sec. 2). So also he may demand to see the licence of any person found taking or pursuing game within the manor (Game Licence Act, 1860, Sec. 10). Further, either the lord or his gamekeeper may demand any game recently killed by a person found trespassing in pursuit by day or night, and, if refused, may seize the same (Game Act, 1831, Sec. 36).

Again, a lord of manor, or reputed manor, and his duly appointed or deputed gamekeeper, are exempted from the provisions against trespassers in pursuit of game in the daytime, contained in the Game Act, 1831, as far as the limits of the manor (Sec. 35).

The right at common law of a civil action of trespass is, however, preserved by Sec. 46, so that an action for damages may be brought against the lord or his gamekeeper who trespasses in pursuit of game on land in the occupation of tenants of the manor in cases where prosecution before the magistrates may fail.

The ancient rights, however, of lords of manors sporting over the wastes and common lands has, in the great majority of cases, been lost by the inclosure of these lands under various Inclosure Acts. To ascertain whether the lord has a right of sporting over lands inclosed and allotted to tenants of the manor, one must look at the Special Inclosure Act, and the award of the Inclosure Commissioners thereunder. All or most of the local Acts contain reservations of certain of the lord's rights, such, for instance, as franchises and free warrens, and it depends on the generality of the wording of the clause of reservation whether the right of sporting over lands to be inclosed is lost or not.

It has been held, in a case under the Inclosure Act, Inclosure Commissioners have power to sever the right to take game from the ownership of the soil, and vest in the lord, if the latter makes that a condition of his assent to the inclosure (Musgrave v. Forster, 1871), and in many cases this has been done, and the lord's right of sporting has been reserved, notwithstanding that the lands have been inclosed. There is, however, no general rule to this effect applicable to the country at large. It depends entirely on the particular award and Act under which the lands were allotted.

With regard to commons, the soil of which is vested in the lord, the commoners merely having a right of pasture, the right of sporting, as we have before observed, remains with the lord; and the latter's rights are expressly reserved by the Game Act, 1831 (Sec. 10), and, if the lord likes to make a rabbit-burrow on the common, the commoners have no right either to destroy

the rabbits or to block up or destroy the burrows. If, however, by the lord's act the rabbits so increase as to destroy the pasture of the common, this is what is called a surcharge of the common by the lord, and any commoner may bring an action at law against the lord to restrain him in the same way as he would bring a similar action against another commoner for putting too many beasts on the common (Cooper v. Marshall, 1757). As was observed by the judge in the case cited, the law will not trust the commoner to judge for himself where the line is to be drawn. If he considers the rabbits are a nuisance, he must not attempt to abate the nuisance himself but seek his remedy in the Courts. The Ground Game Act, 1880, contains, as we have seen, a reservation in favour of lords of manors (see Chap. VI).

Warrens.

Perhaps it was in order to encourage the breeding of hares and rabbits for sale that special provisions were inserted in the Larceny Act, 1861, giving additional protection to the owners of "warrens" against both day and night marauders. Any land set apart for the breeding of hares or rabbits constitutes a "warren," but such an ordinary warren must be distinguished from a right of "free warren," which is a special franchise granted by the Crown.

To take hares or rabbits from a warren is, of course, an offence against the Game Laws, constituting either a trespass in pursuit of game or night poaching, according to the time at which the offence is committed. But the Larceny Act creates additional offences, making it a

misdemeanour triable at quarter sessions or assizes, and punishable by fine or imprisonment, to take or kill at night any hare or rabbit in any warren or ground lawfully used for the breeding or keeping of hares or rabbits, whether enclosed or not (night being from the expiration of the first hour after sunset to the beginning of the last hour before sunrise).

To take or kill a hare or rabbit in the daytime in any such warren or ground, or to set a snare or trap there at any time, is an offence punishable summarily before the magistrates by a fine not exceeding £5 (Sec. 17).

The section does not extend to taking or killing rabbits in the daytime on any sea bank or river bank in Lincolnshire as far as the tide extends or within one furlong of such bank.

Anyone may have a warren on his land; he may turn down rabbits, and encourage them to make their earths all in one spot—an old sandpit, for instance—by enclosing the land temporarily or by any other means. His neighbours may shoot them if they stray on to their land, but not, of course, otherwise. The neighbours, however, have no right of redress at law against the incursions of the conies into their crops; the answer of the warren owner to any such complaint being, "You can put some wire netting round your fields if you want to stop them." Everyone has to fence against his own stock, but he needn't fence against the rabbits in his warren, and no action can be brought against him for keeping them (Boulston's Case, 1598). In that case, it was stated that "if a man made cony-boroughs in his own land, which increase in so great number that they destroy his

neighbours' land next adjoining, his neighbours cannot have an action on the case against him who makes the said cony-boroughs; for so soon as the conies come on to his neighbour's land he may kill them, for they are *feræ naturæ*." There is, however, another aspect to this case, for land may be so artificially stocked as to give the adjoining owners a right of action.

An Interview.

Some time in the early part of last summer a young friend of ours, who had been experimenting with some success with a rabbit farm, came to consult us. He had, of course, as is usual on rabbit farms, close fencing or wire netting all round the land, and he kept a very large stock of rabbits and foreign hares. As our friend walked into the office, he began, without any preliminaries:

"Look here, old chap, didn't you advise my father a year or two ago that the man who had the next farm had no right to prevent him using the old gravel-pit just against the boundary as a rabbit-warren?"

"Why, yes," we replied, "I do recollect your father asking me my opinion about it. Has the farmer been turning nasty about it?"

"No, he's all right," said our client, "but I'm in the same difficulty. You know my rabbit farm; well, somehow or other, a bit of the wire netting got knocked down, and about a hundred and fifty of my rabbits got out last night."

"Well, my dear fellow, you surely haven't come to me to catch 'em for you, or to tell you how to do it? Of course, anybody can kill them who likes, and—"

"No, no, it's not that. I can put up with losing the rabbits; but you know old Closephist has got the farm



"Opposite a very promising field of wheat of his, and all my rabbits are in it."—p. 327.

next my land, and, as luck would have it, this breakdown of my fence happened just opposite a very promising field of wheat of his, and all my rabbits are in it, and he's been down in a towering rage to my house, and says they'll eat the whole crop before long. Of course, I'm not liable, as you said, but then it's beastly awkward."

"Hold hard there! Who said you weren't liable?"

"Well, you said the governor wasn't liable for the rabbits in the warren, and it's all the same, isn't it?"

"Not quite, my friend," we answered; "you see, your father really only induced the rabbits to live and breed in the gravel-pit in a state of nature. He started them, and they did the rest. They made their homes themselves, but you have brought on to your land an enormous number of rabbits beyond what would naturally live there, as is proved by the fact that you have to keep them in by a fence. Now, it's settled law that if a man brings on to his land something which, if let loose, would do damage, whether it is water in a reservoir or a lion in a cage, he must take the fullest responsibility for it, and, if it gets loose from any cause whatever, he is liable to his neighbours for any damage done."

"Well, but I didn't knock the fence down. Somebody came in the night and did it for spite."

"That again doesn't matter, unless it was Closephist himself, or somebody acting by his orders. You might have turned down any ordinary number of rabbits to stock your land for shooting, but you've chosen to bring an extraordinary number, and the law treats them the same as a dangerous animal. I am afraid you must pay. If you can find out who knocked the fence down, prosecute him, by all means, or, if he is worth it, sue

him for the damage you yourself have to pay, and also for the value of the rabbits. But first of all go straight up to Mr. Closephist's, conciliate him as best you can, and settle at once for as low a figure as you can. If you can't do it for a reasonable figure, come to me, and I'll try."

Our opinion was given on the spur of the moment, but after reflection we believe that we laid down the law as it would have been interpreted by the Court had an action been brought against our client—an event which did not happen, owing to his at once acting on the advice and settling the matter amicably with Mr. Closephist.

CHAPTER XXII

AGREEMENTS RELATING TO THE HIRE OF SPORTING RIGHTS



HAVING commented somewhat exhaustively upon the law relating to shootings, we will now deal with the features of special agreements relating to the hire of shootings and shooting rights. In the first place, we will premise that a third person, to whom the landlord has let the shooting, stands in the same position with regard to the tenant of the land as the landlord would if he had reserved the shooting to himself, and has the same rights, and is subject to like liabilities; but it must be remembered that, in order to acquire those rights, *the lease of the shooting must be by deed.* And the right of shooting being considered by law to be an interest in land, an agreement to grant a lease of shooting must, by the Statute of Frauds, be in writing,

and signed by the party who is sought to be made liable, or by his authorized agent.

So if A., by word of mouth only, agrees to let some shooting to B., or to let B. go shares in his shoot, he can at any time break faith with B. without being under any legal liability. Again, if A. writes to B., offering the latter some shooting on certain terms, and B. verbally accepts the offer, B. can sue A. if he refuses to stand by his letter, but A. cannot sue B. if B. won't stand by his word. When once, however, one of the parties has signed a memorandum agreeing to grant or to take a lease of shooting, and containing the terms agreed upon, he can be compelled by the other party to execute a proper lease if he refuses to do so, or can be sued for damages for breach of contract, whichever the party suing prefers.

Moreover, although a document purporting to be an actual lease of shooting is void if it is not under seal, yet if the tenant has received the benefit of the shooting he cannot afterwards set up the plea that the lease is void, but must pay the rent agreed upon, and perform any stipulations contained in the document (Thomas v. Fredericks, 1847). The same may be said of an agreement by word of mouth. If the tenant has received the benefit of such an agreement, he must pay the rent; but if he doesn't exercise the rights, he cannot be compelled to pay.

With regard to the effect of a written agreement not under seal, a dictum of Cozens-Hardy, J., in the recent case of Lowe v. Adams (1901), would seem to suggest that in that learned judge's view such an agreement is practically as effective *as between the parties to it* as a document under seal; this, however, must not be deemed

to affect what we have previously said as to the sporting tenant's position with regard to third parties. He will not be deemed to be the legal owner of the sporting rights unless his lease or agreement is under seal.

It may perhaps be as well to introduce a simple form of agreement or lease of sporting rights:—

AD VALOREM IMPRESSED STAMP

This Agreement, made the day of 19—. BETWEEN A. B. of (address and description) hereinafter called "the landlord" of the one part, and C. D. of (address and description) hereinafter called "the tenant" of the other part, witnesses that the landlord lets and the tenant takes the sole and exclusive right (subject only to the concurrent right of occupiers under the Ground Game Act, 1880) of shooting and sporting over and of turning down and preserving game, wildfowl, woodcock, snipe, quails, landrails, and rabbits on the farm and lands mentioned in the schedule hereto, with power to enter upon the said premises for the purposes aforesaid. FROM the day of 19— from year to year until the tenancy is determined at the end of any year of tenancy by either party giving the other six calendar months' previous notice in writing. AT the yearly rent of £ payable by equal half-yearly payments on the day of and the day of in each year.

And the tenant agrees—

1. To pay the said rent at the times and in manner aforesaid.
2. To pay all rates and taxes in respect of the said sporting rights.
3. To keep the number of hares and rabbits down so as to prevent them becoming injurious to the woods or crops on the lands; and to keep down the vermin.
4. To pay the landlord or his tenants compensation for mischief or damage which shall be done to the woods or crops by game or rabbits.
5. To leave at the determination of the tenancy at least head of hen pheasants and head of cock pheasants and head of partridges.
6. Not to assign or underlet the said tenancy without the previous consent in writing of the landlord.

And the landlord agrees—

7. That the tenant paying his rent and performing his agreements may quietly enjoy the said rights and privileges without hindrance from the landlord or anyone claiming through him.

And it is mutually agreed—

8. If any part of the rent shall be in arrear for 21 days, whether legally demanded or not, or if the tenant shall commit any breach of his agreements, the landlord may by notice in writing forthwith determine the tenancy, without prejudice to his right of action for breach of agreement.

9. Every matter in difference between the parties arising in any way out of the provisions of Clauses 3, 4, and 5, or any of them, shall be referred to a single arbitrator, or in case of the parties being unable to agree upon an arbitrator, then to two arbitrators, one appointed by each party or their umpire.

As WITNESS the hands and seals of the said parties:

THE SCHEDULE.

(Short Description of Land over which Rights granted.)

A. B. [SEAL]

C. D. [SEAL]

Signed, sealed and delivered by the said A. B. in the presence of
(Witness's name, address, and description.)

Signed, sealed and delivered by the said C. D. in the presence of
(Witness's name, address, and description.)

The stamp on this document will not be a 6d. agreement stamp, but must be an impressed stamp, varying according to the yearly rent. Thus, up to £5, 6d; £5 to £10, 1s.; £10 to £15, 1s. 6d.; £15 to £20, 2s.; £20 to £25, 2s. 6d.; £25 to £50, 5s.; £50 to £75, 7s. 6d.; £75 to £100, 10s.; above that, the rate is 5s. for every £50 of rent or fraction thereof.

The first thing that will probably be noticed about the above document will be that which comes last, if we may be permitted to use an Irishism, viz., that though expressed to be an agreement, it is under seal That, as we have before said, is absolutely essential.

to legally vest the rights in the tenant as against third parties, though as between the landlord and tenant it may be that a document not under seal may answer all practical purposes (see Low v. Adams, cited above). It may be noted that no saving in the stamp duty is effected by having an agreement under hand only.

Turning to the particular provisions of the document, we will deal with such of them as it seems advisable to comment on. It will be noticed first that we specially mentioned the right of "preserving" game, etc.; that we have specifically referred to the particular species of birds and animals which are to be considered as within the tenant's right to take and preserve. The latter is perhaps an example of unnecessary legal caution, for it has long ago been decided that a grant of a right of "shooting and sporting" does not limit the tenant to game strictly so-called, but includes whatever are commonly considered to be the subject of sport, as rabbits, woodcock, etc. (Jeffryes v. Evans, 1865.)

As to the right of turning down game, etc., however, it is necessary that such a right, if it is to be exercised, should be given expressly, or by implication, for it has been decided that a lease of the exclusive right of sporting does not entitle the tenant to turn down game, etc., not bred on the land (Birkbeck v. Paget, 1862). In conjunction with this case, however, should be considered that of Farrer v. Nelson (1885), where Pollock, B., lays it down that "each person is entitled to bring on to his land any quantity of game which can reasonably and properly be kept on it, and so that nothing extraordinary and non-natural is done," though

with the next breath he cites Birkbeck v. Paget as an authority that the lessee (of the shooting) is not entitled to bring on the land (any) game not bred in the ordinary way. It should be noted, however, that the report of the case in the Law Journal Reports, does not contain the observation quoted above.

We would suggest as a good working rule that the owner of the sporting rights may, in the absence of agreement on the point, turn down on the land every year such number of hand-bred pheasants as, together with those already on the land, shall not exceed the number of pheasants that might be expected to be found on the land if it had not been shot over in the previous season. In our Form of Agreement the right of turning down game is of course restricted, to some extent, by the subsequent stipulations.

It is not thought necessary to insert, as some lawyers do, additional words to extend the right of entry to servants and guests of the tenant. The terms of the grant as they stand are wide enough to include this. They are also wide enough to include the right to send gamekeepers on the land to look after the game, etc., and to kill vermin.

In the absence of any provision specifying the length of the notice to be given, the law merely requires a reasonable notice to terminate a yearly tenancy of sporting rights, but this reasonable notice is not necessarily a half-year as in the case of houses, and according to the decision of Mr. Justice Cozens-Hardy, in the case of Lowe v. Adams, cited above, a month's notice expiring with any current year of the tenancy (in the case in question, 25th March) is sufficient.

The rent may, if desired, be made payable in advance. This in some cases is most necessary.

Passing on to clauses 3 and 4, it will perhaps be asked by the reader what is the good of having a covenant to keep down the ground game when you have another covenant to pay compensation for damage done? Doesn't the latter provision include the former, or, at least, render it unnecessary?

Hardly so; our object, as far as possible, is "prevention rather than cure."

If clause 4 stood alone, the tenant could increase his number of ground game to such an extent as to threaten serious damage to the underwoods, young trees and crops, and when remonstrated with might simply say, "All right; you wait till the damage is done, and then make your claim to compensation." Now it is well known that so-called compensation does not always compensate for the injury committed, *i.e.*, in the eyes of the injured party. So if we can make our friend the tenant keep his ground game down to proper limits, we may save our property an injury "that we wouldn't have had happen for three times the money" awarded by way of compensation.

There is, unfortunately, no process of law by which we can compel a man to kill down the game. An injunction will not be granted (as a general rule) to make a man do a thing; only to prevent him doing it. Our object in the present case may, however, be attained by proceeding, or threatening to proceed, to terminate the lease under the provision in clause 8. In this way we shall probably effect our object, though indirectly. In some cases, of course, where the sporting tenant wants to get out of his

bargain, this scheme will not work, but in general it may be relied upon as passingly efficacious.

Another plan would be to insert a special proviso to clause 3, giving the landlord power, in case the covenant is not complied with, to kill down the ground game himself. The exercise of this power, however, would probably lead to more work for the lawyers.

The covenant to keep down ground game which we have been considering is only necessary when the shooting is let by the owner of the farm who is not also occupier. The occupier, whether himself the owner or not, retains the rights under the Ground Game Act, as will be seen in the chapter dealing with that Act, which will be a more effective check than any covenant on the part of the sporting tenant, and as there pointed out, the occupier of the farm must rely on his statutory right to kill down the hares and rabbits, and not on any agreement for compensation for damage done in the event of his leaving them for the landlord or sporting tenant (Sherrard v. Gascoigne cited in the chapter above referred to).

With regard to winged game, the Agricultural Holdings Act, 1908, as we have already seen, gives a farm tenant a right irrespective of any contract to compensation for damage. Such compensation is claimed from the landlord, and if the sporting rights are let, then the tenant of the sporting rights is bound to indemnify the landlord against the farm tenant's claim. The covenant to pay for damage to crops is, therefore, of comparatively little importance at the present time where the land is let. The Act does not, of course, give any remedy to an occupying owner who lets the shooting, and in this case the covenant should always be inserted.

Of all the provisions of a sporting lease, perhaps the one which is most frequently a "matter of difference" between the landlord and tenant is that by which the tenant agrees to pay compensation for damage done by the game. As far as damage to crops is concerned, this provision is only of use when the landlord (*i.e.*, the person letting the shooting, whether owner or tenant of the land) is himself in occupation of the land, or has himself undertaken to be responsible to the tenant of the land. In other words, the owner of the crops can only sue under the covenant if he is the person with whom the covenant is made. If another person is in occupation of the land as tenant, he cannot sue under the covenant, but must proceed against his landlord under the Agricultural Holdings Act, or bring an action against the tenant of the sporting rights for overstocking the land with game; this latter right, however, is a very unsatisfactory one, and in future will doubtless only be made use of where the farm tenant has omitted to give the notices required by the Act. As far, however, as permanent damage to the estate is concerned, such, for instance, as the destruction of young trees by rabbits, the landlord has a right to recover compensation for the injury, notwithstanding that the land is let to a third person, and he may also recover damages under this clause for injury to his tenant's crops in the very rare case of having himself entered into a contract with the farm tenant to make good the damage.

But although in the ordinary case of the owner having let the land to one person and the shooting to another the owner cannot recover damages under this clause for injury to tenant's crops, he may indirectly make use

of this covenant to assist his farm tenant to recover compensation, without recourse to the Agricultural Holdings Act, by the same means by which, as we have said, he can ensure the ground game being kept down, viz., by threatening to terminate the lease under clause 8.

As to the clause relating to compensation, it only remains to be said that a friendly reference of the "matter in difference" to some farmer who is also a sportsman is the best way of avoiding unpleasantness and heavy legal expense.

Clause 5 is sometimes varied by an agreement to leave so many first or second season birds in the mews; not to shoot through the coverts more than a specified number of times, and in other ways according to individual opinion or caprice.

Upon the next three clauses of the agreement we do not think it necessary to offer any comments; any criticisms or explanations we could give would be of too technical and dry a legal character to be of interest to the general reader.

With regard to the last clause, it will be noticed that we have only made arbitration compulsory in cases of difference on points relating to the stock of game and compensation for damage, leaving it open for the parties on other points of difference to seek the aid of the Court. Such matters as the former can best be determined by a practical man on the spot, but for questions which are likely to give rise to points of law, or that require a quantity of evidence to be taken, we cannot, speaking with some experience, recommend arbitration as either a cheap or a satisfactory method of settling disputes. Of course, the clause can be, and frequently is, drawn so as

to include all disputes arising out of the tenancy, but as a matter of practice this is not altogether advisable.

The simple form given comprises the essential features of a lease of shooting rights over a small estate, and more particularly where such shooting is held as an adjunct of a larger shooting estate. We have considered the provisions no more from the landlord's point of view than the tenant's, inserting only such conditions as we think necessary for the protection of the former. When, however, we come to big shooting estates, where large quantities of game are preserved, there are many other points to be thought of besides those to which we have at present turned our attention.

To begin with, anyone who is going to hire a large shoot must consider what cottages he requires for his keepers. Even for a comparative small shoot, one keeper's cottage is absolutely essential if the game is to be properly preserved, and this should be hired with the shooting. Again, the question of land on which to rear pheasants requires the earnest thought of the would-be hirer of shooting and his advisers. To those well skilled in the practical part of the subject, it is well known that a by no means small extent of pasture is required for the coop-reared young pheasants to run on, and it is a further fact well known to experts that, to secure the best results, the coops should not stand on the same land two seasons in succession. Provision should therefore be made for the shooting tenant to have the right of appropriating at least one suitable piece of pasture every year, and giving him the right of alternating between two, or, if possible, more fields from year to year. The only other alternative to this is for

the tenant to absolutely hire several pieces of pasture. He can then use whichever he pleases in any year, and let the keep on the other for the season. These two questions—the keeper's cottage or cottages, and accommodation for the rearing of pheasants in coops—are the two chief ones with which the intending tenant has to concern himself.

There are other points, which in practice are of minor importance, which may be considered on the letting of shooting. For instance, it is sometimes considered advisable to insert provisions as to the putting-up of wire netting by either landlord or tenant round the coverts, or along certain boundaries or fences, which are frequented too much by ground game; but these, of course, vary in accordance with the nature of the shoot and the county in which it is situate.

CHAPTER XXIII

DEER



WILD deer are subject to the same common law rules as game, and the occupier of any land who sights a wild deer on his land may shoot it, and the property thereupon vests in him. We are presuming, of course, that the sporting rights have not been reserved to the landlord or granted to any other person, for in such case the right to take the deer would be vested in the latter. It must be remembered, however, that deer are not included in the definition of "game," so that a mere reservation of game would not include deer.

Tame deer, on the other hand, are as much a species of private property as sheep, so that if a tame deer strays on to another man's land he has no right to shoot or take it against the real owner, and if he does so he may be prosecuted for stealing, though, unless it was shown that he knew it to be a tame animal, it would be difficult to secure a conviction if the plea were set up that the shooter imagined it was a wild one.

In any such case, however, it would, of course, be very material to consider whether there were any wild deer within such a distance as to make it reasonable to suppose that the one shot by the landowner or tenant was a wild animal, though, as is well known, a deer, wild or tame, will, on occasions, travel very long distances from the woods or parks in which it is usually to be found.

Although, too, ignorance of the fact that the animal was a tame one may remove the act of killing and taking it from the category of a criminal offence, still the right to the carcase of the deer, when killed, will not depend upon the knowledge or belief of the shooter, but upon the fact whether the deer was in reality a tame one or not. If it was a tame one, the carcase belongs to the owner of the live deer; if a wild one, to the shooter or person on whose land it is shot.

Somewhat difficult questions may arise on this point. A pet deer is, undoubtedly, a tame one within the meaning of our proposition, and so are the carted (tame) stags kept for hunting purposes. On the other hand, stags which have travelled from such regions as New Forest or Exmoor as certainly fall within the category of wild deer. The difficulty arises when we come to consider the position of deer in parks. In many cases, especially in small parks, the deer are practically tame, or as tame as they can be made when kept in herds, and to knowingly steal or kill and take a deer belonging to one of such herds appears to be as much larceny at common law as is the stealing of a pet deer. No doubt all park owners would contend, if there were an advantage in doing so, that their herds were sufficiently tamed to be classed,

for the purposes of the protection of the law, with domestic animals; but in very large parks and woods and forests it is undoubtedly the fact that we often find the deer absolutely wild, and in such cases it could hardly be held that they ranked as domestic animals. In each case, however, it is a question of fact to be determined by the judge or magistrate.

Wild deer, like game, properly so called, were not the subject of property at common law, and it was no offence to kill them on another's land, the only remedy of the occupier of such land being a common law action for trespass. Various provisions have from time to time been made by Act of Parliament to protect the interests of deer preservers, but the older statutes were repealed, and replaced by the Larceny Act, 1861 (Secs. 12 to 16).

The first of the above sections of this Statute relates to deer in a legal forest, chase, or purlieu (the borders of a legal forest), and provides a penalty of any sum not exceeding £50 for anyone unlawfully and wilfully killing, hunting, snaring, or wounding, or attempting to kill or wound, any deer kept or being in the uninclosed part of any forest, chase, or purlieu. The second offence is a felony, punishable by imprisonment.

The next section throws the protection of the criminal law round deer kept in a park, etc., providing as it does, that anyone unlawfully and wilfully coursing, hunting, snaring, carrying away, killing or wounding, or attempting to kill or wound, any deer kept or being in the inclosed part of any forest, etc., or in any inclosed land where deer shall be usually kept, is guilty of a felony, and liable to imprisonment up to two years, with or

without hard labour; and if a male under sixteen, with or without whipping (Sec. 13).

This section, of course, protects wild deer; tame ones are already protected by the common law.

Section 14 is a very useful section, which could be made an instrument of oppression in many cases. It provides, in effect, that any person in whose possession or on whose premises any deer, or the head, skin, or other part of any deer, or any snare or engines for taking deer, be found, may be summoned before a justice of the peace to account for the same; and if he fails to give a good account, showing that he came by the same lawfully, and in case of a snare or engine for taking deer, that he did not keep the same for an unlawful purpose, he may be fined up to £20. If the person so summoned proves that he innocently obtained the deer, or its head, skin, etc., from another person, then the last-mentioned person may be summoned to prove his innocence. And so the game may go on, and when the magistrate finally gets someone before him who cannot account for the possession in a legal manner, he may be fined.

Truly an inquisitorial provision. It is an almost singular instance in which the policy of our legislature has seen fit to reverse the ordinary rule of law, and provide that a man shall be held to be guilty until he has proved his innocence. A recent case shows, however, that the Court will not construe the section as in any way altering the rule of common law that the qualified right of property which a man has in all animals *feræ naturæ* on his land ceases immediately such animals cross his boundary (Threlkeld v. Smith, 1901). In that case a farmer shot a wild red deer which had

strayed out of the forest in which the herd was kept on to a common belonging to an adjoining manor. The police, acting under a search warrant, found the body of the deer on the farmer's premises, and he was prosecuted under the section quoted above. The justices convicted, but on a case stated for the opinion of the Divisional Court the conviction was quashed, on the ground that all the defendant has to do to avoid the penalties of Section 14 is to show that he had not unlawfully killed or taken the deer *within the meaning of either Section* 12 *or Section* 13, and that those sections only apply if the killing, etc., takes place within the purlieus of the forest or other ground where the deer are usually kept. It might be that the (civil) rights of the lord of the manor on which the deer was shot had been infringed, but no criminal offence had been committed in shooting it outside the forest, and therefore it had not been unlawfully taken within the meaning of Section 14.

Section 15 provides a penalty not exceeding £20 for unlawfully and wilfully setting or using any snare or engine for the purpose of taking deer in any forest, chase, or purlieu, or in any inclosed land where deer are usually kept, or for unlawfully and wilfully destroying any part of any fence on land where deer are usually kept.

Section 16 provides that if any person shall enter any forest, etc., or inclosed land where deer are usually kept, with intent unlawfully to hunt, course, wound, kill, snare, or carry away any deer, every person entrusted with the care of such deer, and any of his assistants, may demand from the offender any gun, firearms, snare, or engine, or any dog brought for hunting, coursing, or killing deer;

and if the same is not immediately delivered up, may seize and take the same from him, or if he escapes, may follow and take them at any other place. Moreover, to protect the forester or park-keeper and his assistants, it is provided that if the offender shall beat any of them whilst in the execution of the powers given by the Act, he shall be guilty of a felony, and liable to imprisonment, with or without hard labour, for not exceeding two years.

The provisions of this Act are intended, of course, for the protection of wild deer. Tame deer, as above mentioned, are under the protection of the common law. But it will be seen that the Act only refers in the case of inclosed lands to those inclosures where deer are usually kept. Thus if a wild deer is found upon an ordinary farm and there shot by a trespasser, the occupier has no criminal remedy against the trespasser, but may, of course, bring a useless and expensive common law action for trespass. On the other hand, the trespasser has no right to the carcase, which belongs to the occupier of the land (unless the general sporting rights belong to to the landlord or some other person). If, however, neither the trespasser nor the whereabouts of the carcase are discovered till the former and his friends have consumed the venison, the occupier of the land will be chagrined to find that he has no satisfaction but a right of action for damages against (probably) a man of straw.

We remember in the early days of our professional career being consulted in a case of this kind. A farmer, a client of ours, had information that a fine fat doe was grazing on his pastures. Being anxious for some sport, and also for some venison, he took his gun and quickly loaded some special cartridges, replacing the shot in each

by a bullet moulded by his children for use in some bloodthirsty-looking catapults of their own manufacture, and, as a police-constable puts it, "proceeded to the field in question," or rather to one of the outer corners, when he got a sight of the doe quietly grazing at some distance. He was creeping cautiously along under the shadow of the hedge when, to his great annoyance, he heard a report, and, looking up, he saw the deer bound into the air and fall dead. A moment after, a well-known poacher proceeded leisurely to crawl through another hedge at a spot much nearer the animal. This was too much for the farmer, who rushed forward and doubtless would have committed a violent assault on the trespasser on the spot had not the latter gentleman considered it best to leave without delay. The farmer at once cut the beast's throat and then sent it to the village butcher, and subsequently on the same day appeared at our little sanctum for advice as to what he could do against that villainous poacher. Could he prosecute him for stealing? No. Then he would prosecute him for trespass in pursuit of game.

"But, my dear sir," we interrupted, "deer are not game."

"Not game! Then what do we mean when we talk about 'big game'? Surely that includes deer?"

"When I say 'game,' of course I mean game as defined by the Game Acts," we answered; "and there appears to be no provision in the Acts to meet such a case as this."

We might add here that we had heard a rumour of the circumstances shortly before our client put in his appearance, hence we had had an opportunity of looking the point up, otherwise, at that early stage of our practice,

we should not, perhaps, have been so ready with an answer.

"But surely," our client continued, "a wild deer belongs to me when it comes on my land; at least, so I've read somewhere."

"No doubt it does, my dear sir, when it is killed, but not until. But are you quite sure it was a wild deer?"

"Well," said our client, reflectively, "I've really never thought of it till now. Now you come to raise the question, perhaps it wasn't very wild. And supposing it wasn't wild, what then?"

"Well, then the owner might come and claim the carcase."

"And suppose it was eaten?"

"Well, it might be the owner would come on you for the value of it."

Our client thoughtfully considered our propositions, and then said he thought he'd inquire about it.

His inquiries consisted in informing the local police constable, who was very diligent in searching for the true owner of the deer, urged on, as we afterwards heard, by the suggestion from our client that perhaps the owner would prosecute that scoundrel of a poacher, as he continued to call him, for shooting a tame deer. The policeman's labours were so well rewarded that before the venison was well hung the keeper of Lord B— appeared on the scene and identified the skin at the butcher's as that of a doe that had escaped from his lordship's park, forty miles distant, by leaping the park wall.

Our farmer friend, as we heard later, urged on the keeper to prosecute the shooter, but the former, very

wisely, as we thought, refused, saying that though he called the deer tame he didn't know what those lawyers would make it out to be, and he knew the man couldn't be convicted for shooting a wild deer outside the park. Moreover, as he said, once a deer had escaped as this had, the park fence would never keep it in again; it would always be leaping the wall, and he was glad it was shot. All he wanted, he said, was the skin, and he suggested an equal division of the carcase between the farmer, the poacher, the butcher, and the policeman, and this division was actually carried out to the satisfaction of all parties except our client, who strongly objected to the poacher taking any share; but, as the former was not prepared to support his original contention that the animal was really a wild one, he had to give way and be content with the quarter allotted to him as his share of the spoil.

CHAPTER XXIV

THE RATING OF SPORTING RIGHTS

THE Statute of Elizabeth (the Poor Relief Act, 1601) which is the foundation of all our laws of rating, did not extend to what are called incorporeal hereditaments: in other words, rights over and in connection with land were not rateable separately from the land over which they were enjoyed; and nothing was contained in the Parochial Assessment Act, 1836, to alter this state of things. If, however, the occupier of land himself had the sporting rights over it, such as shooting or fishing, the land was assessed at its annual value as increased by the value of such rights. To take a concrete example, if A. occupied his own land, the agricultural value of which was 20s. an acre, and himself exercised the sporting rights over it, which were of the value of 2s. 6d. an acre, the gross estimated rental on which the rateable value was based would be 22s. 6d. If, however, A. let the land to B. for 20s. an acre and reserved the sporting rights, B. would be assessed on a gross rental at the rate of 20s. an acre, and the sporting rights would have been free from assessment (Reg. v. Thurlstone, 1859). The judges, however, with their usual fondness for distinguishing two cases which to other people seem apparently to be governed by the same principle, held that where the landowner occupied his own land but let the sporting

rights off, he might, as occupier of the land, still be rated on the value of the land plus the sporting rights (Reg. v. Battle, 1867). In the instance cited, therefore, if A., the owner, instead of letting the land to B., had let him the shooting only at 2s. 6d. an acre, A. would have been and might still be assessed on a gross estimated rental of 22s. 6d.

If, on the other hand, the right of sporting was permanently severed from the land, as when vested in the lord of a manor, it was not rateable, and the like held good of a right of fishing granted without any part of the soil of the river (Rex v. Ellis, 1813).

The passing of the Rating Act, 1874, altered this anomaly by extending the Act of Elizabeth and the more modern Rating Acts to rights of fowling, shooting, taking game or rabbits, and of fishing when severed from the land over which they are exercised (Sec. 3, Sub-sec. 2).

Where sporting rights are not severed from the land the old law still applies, and such rights are not separately rated, but their value is taken into consideration as increasing the annual value of the land for the purposes of assessment.

As to the manner in which such rights when severed from the land are assessed, and the person to be assessed, the Act provides (by Sec. 6) that if the person entitled to the land and the right of sporting on the same lets the land at a rent and retains the sporting rights, the landlord is not to be separately rated, but the tenant is to be assessed on the full value of the land, together with the sporting rights; and if the sporting rights are considered of any value, the Assessment Committee, on the application of the tenant, are to certify in the Valuation List or

otherwise the amount by which the rate is increased by the sporting rights, and the tenant can then deduct from his rent such portion of the rates as is paid by him in respect of such increase. If, however, the tenant has contracted with the landlord to pay the full rate as increased by the value of the sporting rights, he is, of course, not entitled to deduct anything.

If any right of sporting is severed from the land and is not reserved by the landlord, then it is to be separately rated, and the owner of the sporting rights is to be deemed the occupier for the purpose of the Rating Acts, subject to the proviso that if sporting rights are let (apart from the land) either the owner or sporting tenant may be rated at the option of the overseers or other persons making the rate. The Act applies to poor and other local rates.

Reverting to the example before given, if A. let land to B. at 20s. an acre, reserving the sporting rights, which we assume to be worth 2s. 6d. an acre. B. will be assessed (subject to the Agricultural Rates Act, 1896, hereafter mentioned) on a gross estimated rental of 22s. 6d., and the Assessment Committee must, at B.'s request, certify the extra value due to the sporting rights, and B. may, after having paid the full rate, deduct from his next rent the proportion of rate due to such increase (2s. 6d. per acre gross value) *unless he has contracted with A. to pay it*. If, however, A. let the land to B. at 20s., and the shooting to C. at 2s. 6d., then B. is only assessed on his actual rental of 20s., and either A. or C., at the overseers' fancy, may be assessed for the shooting on a gross estimated rental of 2s. 6d. And if B. hire the land with the shooting at 22s. 6d., and let the latter to C. for 2s. 6d. an acre, then B. should still be rated for the land

on a gross estimated rental of 20s., and the shooting separately assessed; but the overseers in this case are entitled, as they please, to rate either B. or C. for the shooting, and if they rate B. it seems that, according to the decision of Reg. v. Battle cited above, they need not make two assessments, but may rate B. for the land and sporting rights together on a rental of 22s. 6d. as if he had not re-let the shooting, and leave B. and C. to apportion the rates between them. We are, of course, here dealing with the gross rentals, and not the net or rateable values, which will be somewhat less.

So the lord of the manor who owns sporting rights over inclosed lands, or the owner of a several or free fishery or similar franchise, is rateable under the Act of 1874, and if he lets his rights either he or his tenant may be rated, but, of course, not both.

What we have before stated as to the respective rights of the landlord and agricultural tenant where the sporting rights are reserved or are occupied with the land, must be read subject to the curious result created by the Agricultural Rates Act, 1896, and the Public Health Act, 1875. The former Act, as all are aware, was passed to relieve the occupiers of agricultural land of part of the local taxation, and provides that all such occupiers shall be assessed to the poor rate on their lands (apart from the buildings) at one-half their rateable value. The Act was a temporary measure, holding good for five years only, but has been three times extended, and unless repealed will remain in force until 31st March, 1914.

No mention is made of sporting rights, and consequently, when these are either exercised by the occupier

of the land or merely reserved to the landlord, the rates payable in respect of such rights are reduced by one-half. In each of these two cases it will be remembered the sporting rights are assessed as part of the land, and in the latter case (that of sporting rights reserved) the tenant deducts from his rent the amount paid on behalf of his landlord. As, however, the occupier now only pays on half the real value of the land, plus the sporting rights, it is evident that, whether the occupier has the sporting rights himself (either as owner or tenant of the land), or where they are reserved to the landlord, the benefit of the Act is extended so as to reduce by one-half the rates otherwise payable in respect of the sporting rights. The Act does not, of course, extend to the owner or occupier of sporting rights except in the two cases mentioned. For instance, where the rights are let separately from the land (and not merely reserved to the landlord), or where in their nature they are permanently separated, as the right mentioned above of a lord of a manor or the owner of a free or several fishery, no benefit is derived from the Act.

This result of the Act is an indirect one; it can never be supposed it was intended by the Legislature.

Further, as is well known, the occupier of agricultural land, in addition to enjoying the benefit of paying only half the poor rate, has the further advantage under the Public Health Act, 1875 (Sec. 211 (1) (*b*)), of being only rated at one-fourth its value for the purpose of the general district rate, and, of course, when there is no separate assessment of the sporting rights, the Act operates in the same way as the Agricultural Rates Act does with regard to the poor rate, so that in effect the

sporting rights only pay one-fourth the amount which would be paid in respect of the general district rate if the sporting rights were let away from the land and separately assessed. This Act extends to woodlands, which the Agricultural Rates Act does not.

It would seem obvious to anyone that a person hiring sporting rights only is not an occupier of the land over which those rights are exercised and, therefore, is not entitled to be rated on one-fourth value for general district rate any more than he is entitled to be rated at one-half value to the poor rate under the Agricultural Rates Act, yet some district councils were in the habit of rating separately assessed sporting rights at one-fourth value only, and at least one bench of magistrates sanctioned the view. However, the latter were set right by the High Court Judges who declared such a view to be quite untenable (Alton Urban District Council v. Spicer 1904).

The effect on the rateable values of parishes is of course not so marked in the case of good land, particularly as the sporting rights are often *inversely* proportionate in value to the value of the land over which they are exercised; but in the case of parishes consisting in great part of heath and moor lands and the like, the loss on the rateable value of the shooting alone may be considerable. Oftentimes enough the land would be worth practically nothing except for the value of the shooting; but the mere fact that a few sheep or ponies wander over it is sufficient to reduce the rateable value of the shooting by one-half, if the right of shooting is exercised either by the occupier of the land or the landlord, and not separately let or permanently severed

from the land. The Act, however, defines agricultural land as any land used as arable, meadow, or pasture ground only, cottage gardens exceeding a quarter of an acre, market gardens, nursery grounds, orchards, or allotments; and expressly excludes land kept or preserved mainly or exclusively for the purposes of sport, or recreation, or land used as a racecourse.

Where the line is to be drawn between land *mainly* kept or preserved for the purposes of sport, and land which is not, it is difficult to say; but it should be noted that the words are "kept and preserved," not merely "used," and it would seem that the mere fact that the value of the sporting rights over heath or other poor land may exceed the agricultural value is not enough to deprive the occupier exercising sporting rights, or the landlord reserving them, of the benefit of the Act if in fact the land is used for grazing-ground for such cattle as it will support.

It appears to us clear that rights of fishing stand upon the same footing as shooting rights as regards the Agricultural Rates Act, in so far only as the streams can be considered as part of the agricultural lands through which they flow, assuming, of course, that the adjoining land is used for agricultural purposes. This question may, and probably will, depend to a great extent on the size of the stream. A comparatively small river or stream, although it may be a valuable trout stream, may logically enough be held to be part and parcel of the land through which it flows. It is otherwise with a large river.

This curious anomaly might then arise. If the owner lets the surrounding land and reserves the stream, he



"The Judges smiled at his contention."—p. 357.

would be rated in full on the net value of the stream and the fishing (since he occupies the land, viz., the river bed, over which the right is exercised). But if he lets the bed or soil of the stream with the adjoining land and merely reserves the right of fishing, and exercises it himself or by his licencees, then he might perhaps claim to have the tenant rated for the land including the river, and, of course, the fishing, at half value.

There have not been many decisions of the Superior Courts upon the construction of that part of the Act of 1874 already discussed, and such as have been reported appear to have been quite unnecessary. In Rogers v. St. Germans Union (1877), the question for decision was whether the right of sporting was "severed" from the land within the Act of 1874 by a lease by which a house, buildings, and 19 acres of land were let "excepting all manner of game, hares, rabbits, and wild fowl, with liberty of hunting, fowling and fishing over and through the premises at all times during the term." The Court, of course, held the right was severed, a decision which might have been anticipated by anyone.

Kenrick v. Overseers of Guilsfield (1880), is another case on Sec. 6 of the Act. A Mrs. Curling, the owner of a large estate in Wales, leased the mansion house, some cottages and buildings, and 25 acres of land, together with the right of shooting and sporting over the whole estate, to Mr. Kenrick at a rental of upwards of £300 a year. Mr. Kenrick was rated in respect of what was let to him, but for some reason got it into his head that his landlady should have been put on the rate book in respect of the sporting rights, and went to law with the overseers on the point; but the Judges,

to whom the point was referred by the Quarter Sessions, smiled at his contention, and said his case was just what the Rating Act of 1874 was passed for, and he was quite properly assessed. Mrs. Curling might (as Mr. Justice Lindley remarked) have been put on the rate book in respect of the sporting rights under the provisions of the Act referred to above, giving the overseers an option to rate either owner or occupier of the sporting rights (except where the same are reserved to the landlord on the letting of the land); but as the overseers had chosen to rate the lessee (doubtless under the circumstances it was less trouble to them to do so) he had no right to complain.

As woods and plantations constitute a material part of the sporting value of an estate, a few words should be said as to the mode of assessment of these. Previously to the Rating Act, 1874, underwood only was rateable, and not land covered with timber or timber-like trees. That Act, however (Sec. 3) makes rateable "land used for a plantation or wood, or for the growth of saleable underwood, and not subject to a right of common."

The value is to be estimated (Sec. 4) "if used for the growth of saleable underwood, as if the land were let for that purpose," and "if used only for a plantation or wood, as if the land, instead of being a plantation or wood were let and occupied *in its natural and unimproved state*."

Probably the draftsman of the Act is the only person who ever understood what was meant by the extraordinary expression italicized above, and he unfortunately cannot be referred to to interpret it. The

Judges of the High Court have been asked to put an intelligent meaning on the words in question (for example, see the case of the Earl of Westmoreland v. Southwick and Oundle, 1877), but they have ingeniously avoided the knotty point by saying that the "natural and unimproved value" of the land is a question of fact to be decided in each case by the Quarter Sessions. We know, however, from the case last cited, and from Eyton v. Mold (1881), what the curious expression does *not* mean. It does not mean the agricultural or other value of the land supposing the trees were cut down and the roots grubbed up; and yet, on the other hand, you are to treat it as if the trees were not there. With this luminous explanation we leave the point, merely adding that if the land is used both as a plantation and wood and for the growth of saleable underwood, the Assessment Committee may rate it as one or the other as they please.

It must be understood that if plantations or underwood have game-preserving values, these sporting values must be added on to the natural and unimproved value of the plantation land, or the value of the land for growing underwood (as the case may be), or else must be separately assessed according to the rules for separate assessment above laid down. (See the cases last cited.)

Thus, for example, in Lord Westmoreland's case, an assessment of 7s. an acre was confirmed, being 6s. in respect of the natural unimproved value and 1s. for the sporting rights.

A difficulty in the assessment sometimes arises from the fact that woods and plantations are very commonly not let with the surrounding land, but reserved, along

with the sporting rights, by the landlord on the letting of his farms. In such a case the landlord must be rated at the annual value of the woods or plantations (taken as land in its "natural and unimproved state," or as underwood, as the case may be) plus the sporting value of such woods, and the tenant must be rated on half the agricultural value of the rest of the farm, plus the sporting rights over the land, exclusive of woods and plantations. Who shall say what is the value of the sporting rights in woods considered without reference to the surrounding land? A rough-and-ready way is to say the pheasants go with the woods and the partridges go with the land, and to distribute the value of the ground game according to the circumstances of each case. As far as pheasants are concerned, the land clearly has no sporting value apart from the woods, which, or rather the trees in which, are not to be taken into account; and as far as the woods are concerned, if they are to be assessed independently of the land, the landlord may argue that the case must be looked at as if he had no right on the adjoining land, but must shoot from within the precincts of the woods themselves. If such argument should prevail—and it is in accordance with the logical interpretation of the Statute—the landlord would probably get his assessment very much reduced.

The principle adopted in the assessment of all sporting rights is the same as in the assessment of a house. As prescribed by the Parochial Assessment Act, 1836, the gross estimated rental must first be found, viz., the rent which a tenant from year to year would give, he paying all usual tenant's rates and taxes, and from this must be

deducted a sum estimated to cover the probable average annual cost of [repairs, insurance and other] expenses necessary to maintain the premises in a state to command such rent. The net result is the rateable value upon which the rate is made. Where the rights are actually let apart from the land at a yearly rent and no premium has been paid as well, that rent will almost invariably be the gross estimated rental for rating purposes unless, of course, under the agreement the landlord has to pay the rates; in the latter case a rule of three sum must be done to ascertain what rent the tenant would have paid had he agreed to pay the rates.

The words referring to the deductions allowable are ill adapted to sporting rights, and usually a person assessed in respect of sporting rights is only entitled to a very nominal deduction for these; it is usual in some districts to allow about 2½ per cent.; theoretically there may be claimed as a deduction the average annual expense necessary to maintain the property (*i.e.*, the sporting rights) in a state to command such rent. What is allowable for deduction under this head is a somewhat difficult problem. The principle of allowing the deduction has been admitted by the Courts to extend to such cases—in the case of Reg. v. Smith (1886), where Mr. Smith was tenant of a salmon fishery on the Tweed for which he paid £305 a year. Under a local Fishery Act he had also to pay a tax levied for the preservation of salmon, known as the Tweed Tax, and amounting to £61. The Assessment Committee, quite properly, as it seems, put Mr. Smith's gross estimated rental at £366, that being the amount the fishing would

let for in its then state of preservation. As, however, the £61 was clearly an expense necessary for maintaining the fishery in a state to command a rent of £366, the Court held it might be deducted again to arrive at the rateable value. In other words, if the tenant had paid a rental of £366, then the landlord would have to pay £61 a year to keep the fishery in a state to command the rent. The deductions allowed by the Act, are sums which a landlord has to pay, assuming the property to be let on a yearly tenancy, is based on the value of the sporting rights when a large number of game have been reared or the land otherwise artificially stocked and preserved through the vigilance of keepers, then the amount annually expended by the tenant in keeping the sporting up to this high level should first be added on to the rent to ascertain the gross estimated rental, and then deducted to arrive at the rateable value, which is too absurd to contemplate. Of course, where the landlord undertakes any expense in connection with the sporting rights which he lets, this must be deducted from the rent paid to arrive at the gross estimated rental, the latter being the annual sum a tenant (paying his own rates) would give for the sporting rights in their natural state.

The procedure on assessment appeals is, of course, too wide a subject to be gone into here, but it may be stated that under the Acts of 1836, 1862 and 1864, anyone having reason to be dissatisfied with his assessment may apply to the Assessment Committee to amend the assessment, and from the Committee may appeal on the question of value only to Special (Rating) Petty Sessions for the Division, or, either on the question of value or any other question, to the Quarter Sessions.

If he prefers to go to Petty Sessions he may appeal from such Sessions to Quarter Sessions, but in such case only on the question of value. Where the sporting rights are reserved to the landlord, and the tenant is rated and deducts the proportion of rate in respect of the sporting rights from his rent as before mentioned, the landlord has a right of objection and appeal (Rating Act, 1874, Sec. 9).

CHAPTER XXV

THE SPORTSMAN AND HIS HORSE

THE following chapter is not intended to be more than a general sketch, and deals only with a few of the elementary rules which seem to the author to most affect those who have to do with horses, either as owners or otherwise.

Dealing in Horses.

There is perhaps no phase of life in which the craftiness of mankind is so apparent as in the buying and selling of horses, and it behoves everyone who has any transactions in horse-flesh to have some slight knowledge of the law relating to the subject.

To make a binding contract for the sale of a horse, as for any other article of the value of ten pounds or upwards, it is necessary, unless the horse has been actually delivered to the buyer or his agent and accepted, that there should either be a contract or note in writing of the sale, or that something should be given in earnest to bind the bargain or in part payment (Sale of Goods Act, 1893, Section 4). To deal with the question of what is a sufficient note in writing within the Statute would be beyond the limits of this chapter, but it may be shortly said that the document in question must contain a reference to the horse sold, a statement of its price, the names or descriptions of the buyer and

seller or their agents, either in the body of the document or by way of signature, and that there should also be embodied in it any other special terms that may have been agreed upon, such as warranties, condition as to passing the veterinary and the like. It need not be signed by both parties, but it must be signed by the one against whom an action is intended to be instituted, or by his agent. The contract need not necessarily be contained in one document; it is sufficient if its terms can be made out from two or more connected documents, as, for instance, correspondence between buyer and seller. No stamp is required.

Failing a written agreement the horse must be either delivered to and accepted by the purchaser (any act being an acceptance which shows an admission of the contract of sale), or part of the price must be paid or earnest-money given. A shilling, or even a penny, would be sufficient, but the common form of binding a bargain by shaking hands on it is quite ineffective for the purpose, and leaves each party as free as before.

The Statute we have just referred to deals, however, only with sales. An agreement for the hire of a horse or for the exchange of two horses is outside the scope of the Act, and no writing is required to prove the terms of the contract in either case.

It is perhaps fairly generally known that when a person buys an article in an open market (as the lawyers call it, *market overt*) he gets a good title to it notwithstanding the seller had no right or title to sell, unless the article in question has been stolen from the true owner, *and* the owner has prosecuted and secured the conviction of the thief, in which case only he can

recover his property from the innocent buyer. With regard to horses, however, there are some quaint old Statutes of Elizabeth, and Philip and Mary (too long to be quoted here) which prescribe a number of formalities to be observed, quite impracticable in the present day, before a purchaser shall gain the advantage which the open market gives him with respect to other things than horses. It may be shortly said that a person buying a horse in open market from one who has no right to sell gets no better title than if he bought out of market.

A warranty of a horse may be given by word of mouth or by writing. If, however, the parties put the agreement for sale into writing, they must include the warranty, otherwise the seller will not, in the absence of fraud, be bound by it, it being the general rule of law that if an agreement is reduced into writing neither of the parties to the contract can go outside that writing to prove the terms of the bargain.

It frequently happens, for instance, that two parties meet and discuss a horse which one of them has to sell, and the owner asserts that the horse is sound; but no bargain is then struck, and the parties go away and write to each other, and eventually an agreement is come to by letter for the sale and purchase of the horse. The buyer finds when he has got it that it is unsound in some respect, and, getting no redress from the seller, promptly goes off to his lawyer to see what he can do. Of course, the lawyer asks for the letters, and, finding no reference to the warranty in them, is obliged to advise his client that he must put up with a bad bargain and not be so foolish next time.

As to what is a warranty, any assertion by the seller or his authorised agent at the time of sale, and previous to the bargain being struck, which is intended to influence the mind of the buyer may be a warranty, and it is not necessary that the word "warrant" should be used. As, however, in four cases out of five when there is a subsequent dispute the seller denies that he ever gave a warranty as represented by the buyer, it is always advisable to insist on a written warranty, which may be contained in the receipt for the purchase-money. For example:—"1st March, 1903. Received of Mr. So-and-So, £30 for Bay Horse, warranted under seven years old, sound, quiet to ride and drive in single and double harness, free from vice and a good worker." A warranty, however, will not cover a patent defect unless the buyer has had no opportunity of inspecting the animal. For instance, if it was perfectly clear to anyone casually examining the horse that he was blind of one eye, a warranty of soundness must be taken subject to the buyer's assumed knowledge of the defect in question.

A very great many cases have been tried on the simple question, What is soundness and what is vice? Perhaps the best definition of soundness is that contained in the case of Kiddell v. Burnard (1842): "That it implies the absence of any disease or seeds of disease in the animal at the time of sale which actually diminishes, or the progress of which would diminish the animal's natural usefulness in the work to which it would properly and ordinarily be applied." Whether a particular defect is an unsoundness within this rule is in every case a question of fact, and it is necessary in case

of dispute that expert evidence should be given on the subject. Of course, where a horse is clearly proved to have been broken-winded, or to be suffering from lameness—whether from injury, disease or malformation—at the time of sale, no one would dispute that the animal was unsound, but a great deal of contradictory evidence is given on the subject of splints and similar defects which may not necessarily affect the capacity of the horse, and in such a case (unless the horse was warranted free from blemish) it depends on whether he was lame from the splint at the time of the sale, or, if not, whether the splint or such like defect was of such a nature as would in all probability produce lameness. That, of course, in the case of a splint depends on its position, and to some extent on the age of the horse, but in any case expert evidence must be given to satisfy the jury one way or the other.

To exemplify the principles just laid down it may be stated that, in several old cases, the following have been held to be unsoundness: a splint existing at the time of sale, from which the horse afterwards became lame; bone spavin; a cough, although only of a temporary nature; convexity of the cornea of the eye, making the horse short-sighted; roaring, if due to some organic disease or defect. A curby hock (*i.e.*, one having a tendency to become curbed) has been held not to be an unsoundness, although it may render the horse more liable to become lame at a future time (Brown v. Elkington, 1841). Crib-biting is not an unsoundness, though it is a vice.

Vice may be defined as a bad habit which either renders a horse dangerous or diminishes its natural

usefulness or is injurious to health, as, for example, kicking, jibbing, crib-biting.

The remedy for a breach of warranty, in the absence of special agreement, is merely an action for damages or a claim for a reduction of the price if not already paid. It should be clearly understood that the buyer has no right to return the horse unless there is a stipulation allowing him to do so. As a matter of practice the buyer or his solicitor almost invariably does offer to return the horse on repayment of the price, and failing acquiescence by the seller in this course, the latter cannot object to the horse being sold by public auction at an ordinary horse sale; and in such case the difference in the price, together with the keep of the horse for a reasonable time, is the measure of damages which the buyer can recover from the seller (Chesterman v. Lamb, 1835).

At most horse-repositories there are printed conditions of sale subject to which all horses are offered, and those conditions, if shown to have come to the buyer's knowledge, or if they are properly exhibited in a public place at the sale-yard, bind all persons purchasing horses at such repository. A common form of condition is that, if a horse is sold with a warranty, he must, if the purchaser objects that there has been a breach of warranty, be returned within 24 (or sometimes 48) hours. In some cases it is also stipulated that a veterinary surgeon's certificate should accompany the horse. Such a condition absolutely precludes the buyer from taking advantage of a breach of warranty after the expiration of the time limited, unless, without negligence on the buyer's part, the horse should have

died in the meantime, when, on its being proved that there was a breach of warranty which would have justified the buyer returning the horse under the condition, he can recover the purchase-money.

Letting and Hiring of Horses.

The rights and liabilities arising on the letting and hiring of horses may be shortly summed up as follows:— The person letting the horse impliedly warrants that it is a suitable horse for the particular purpose for which it is let; the hirer, that he will use the horse for the purpose in question and for no other, and that he possesses and will use ordinary skill in the management of it. If, therefore, a person lets out a vicious horse, he will, unless he makes the vice known to the hirer, be liable for any injury that may be caused to the latter.

The hirer, on the other hand, is not liable for any accident that may happen to the horse unless through his own carelessness or want of ordinary skill, and unless he uses it for some other purpose than that for which it was hired. If, for instance, a man, thinking to get a horse cheaper, hires it to go for a ride to a particular place and takes it out hunting, he will be liable for the full damage done if the horse stakes itself, or even if it gets kicked by another horse in the hunting field.

It has been laid down that if a hired horse is taken ill, the hirer is right to call in a veterinary, and the charges of the latter may be recovered from the owner.

If a person hires a horse with or without a carriage, and by his negligence in the management of it does damage to some other person, he is, of course, liable to

make good such damage, but (on the general principle that a man is liable for the acts of his servants in the course of the master's business) if a livery-stable-keeper sends out a coachman along with a horse, the livery-stable-keeper, and not the hirer of the horse and carriage, is liable for any damage done in the course of the drive (Quarman v. Burnett, 1840); but if the hirer sits on the box and directs the hired coachman what to do, and the latter, following such directions, does some damage, as by coming into collision with some other carriage, the hirer is liable for the injury done (M'Laughlin v. Pryor, 1842).

The liability of a man who borrows a horse is much the same as that of a man who hires one, though it is said that a less degree of negligence will be sufficient to charge the borrower with the damage done (Wilson v. Brett, 1843).

Lien on Horses: Livery-Stable and Inn Keepers.

A lien is the right to retain an article until monies owing have been paid, and (apart from Statute) gives no right to sell the article retained. Liens are either specific or general.

A specific lien with regard to a horse is the right to retain that horse until payment for services rendered in respect of it by which it has become more valuable. It will thus be seen that the right is of a very limited nature. A blacksmith has a right to retain a horse until he is paid for the shoeing of that particular horse on a particular occasion, but not for his general bill. In like manner a horse-breaker or trainer has a right to retain for the charges of breaking or training a horse, but in the

case of a racehorse, where the arrangement is that the trainer will keep the horse in training and the owner may take it to race when he likes and put his own jockey up, the trainer loses what lien he might otherwise have had (Forth v. Simpson, 1849).

The owner of a stallion has a specific lien for the fee for covering a mare (Scarfe v. Morgan, 1838), but on the principle above laid down, that it is only in respect of the extra value conferred on the horse that the lien exists, it may be doubted whether the owner of the entire horse could claim to retain the mare if it could be proved that she was not in foal.

A livery-stable-keeper or agister has no lien except by special agreement, and cannot therefore refuse to allow a horse to be taken away on the ground that the bill for the keep has not been paid (Jackson v. Cummings, 1839), but it may be mentioned that both the livery-stable-keeper and agister are liable for any injury caused to agisted animals which is attributable to their negligence. A good illustration of this was shown in the case of Smith v. Cook (1876). There the defendant had taken a colt and filly to agist, and had put them on a marsh along with some heifers. On the adjoining marsh, which was separated only by a ditch about eight feet wide and three or four feet deep, was a bull, which, as the defendant knew, was in the habit of visiting the heifers. One morning, about a month after the horses were agisted, the colt was found dead in the field, having been gored to death, as was clearly proved, by the bull. The usual evidence was called on both sides, on the one hand to show that horses were frequently turned into fields with bulls, and

no damage was ever done, and on the other to prove that the bull is an animal of uncertain temper and that it is dangerous to put horses into a field with one. The jury, evidently adopting the view that as the bull was not the property of the defendant he ought to have been on his guard against it and not assumed that it was a quiet and harmless animal, as some bulls undoubtedly are, gave a verdict for the plaintiff for £50, the value of the colt, and three Judges of the Queen's Bench Division agreed with the jury and refused to set aside the verdict.

The only case of general lien which it is necessary to deal with is that of innkeepers. An innkeeper is a man who keeps an inn—in other words, a man who keeps a licensed house *and* holds himself out to provide for the accommodation of man and beast. (A public-house, be it noted, is not necessarily an inn.) At common law an innkeeper is an insurer—that is to say, unlike an agister, he is liable not only for the negligence of himself and his servants, but for any loss or damage whatever caused to his guests, otherwise than by their own negligence or the act of God. This liability has, to some extent, been modified by Statute (an extract from which may be seen in most large inns or hotels), but not in the cases of horses or carriages put up at the inn stables or yard, and the innkeeper is liable if the guest's horse or carriage be stolen or in any way injured except by the act of God or through the guest's own negligence. If, however, at the request of the guest the horse is turned out into a field, then the innkeeper's liability is merely that of an ordinary agister.

If, on a fair day or other occasion when the stables or sheds are full, a horse or carriage is placed outside, the innkeeper is still liable for loss or damage unless the guest consented to this being done, for if the innkeeper had not room he need not have taken the horse or carriage in (Jones v. Tyler, 1834).

The fact that an innkeeper has let the right of taking in horses to his ostler does not affect the former's liability (Day v. Bather, 1863).

The general lien of an innkeeper extends not only to the guest's own property, but to any hired or borrowed horse or carriage which he may bring with him or have sent to him in his character of guest, and, since the lien is a general one, the horse and carriage may be retained not only for the keep of the former and the standing room of the latter, but for the whole bill which the guest may have run up for himself, his wife and family. This sometimes operates rather hardly on carriage-builders and livery-stable-keepers, for, if a hired horse or carriage is taken by the hirer to an inn and the hirer goes off without paying his bill, the owner of the carriage or horse must pay the innkeeper's bill in full before he can recover his own property (Mulliner v. Florence, 1878).

It has been stated above, with regard to a specific lien, that the person entitled to the lien has no right to sell, but in this respect an innkeeper is in a better position, for, by the Innkeepers' Act, 1878, 41 and 42 Vict., c. 38, an innkeeper in whose custody a carriage, horse or any goods are left for six weeks, may sell the same to repay himself his bill, including the keep of the horse in the meantime, but he must, at least

one month before the sale, advertise in one London newspaper, and one country newspaper circulating in the district in which the inn is situated, a description of the horse, carriage or goods, and the name of the person leaving the same, if known, and of his intention to sell the same.

There is, however, no lien if there was an agreement to give credit, unless the period for credit has expired and the goods still remain in the innkeeper's possession. If the owner fraudulently gets possession of the horse or carriage to defeat the lien of the innkeeper, the latter may retake the same if he pursues the guest immediately, but may not commit a breach of the peace in so doing (Wallace v. Woodgate, 1824). An innkeeper is not allowed to use the goods which he retains for his lien, and if he does do so, he is liable for any damage that may ensue, whether from negligence or not, though he is, of course, entitled to give necessary exercise to a horse.

An innkeeper may take a security for his bill, and does not thereby lose his lien unless there was something in the facts of the case or in the nature of the security taken which is inconsistent with the retention of the lien (Angus v. McLachan, 1883). When an innkeeper retains goods under his lien he ceases to be an insurer, and his position is that of an ordinary bailee, so that if damage is done it is necessary to prove negligence to render him liable (see the case last cited).

The lien on the goods of a guest who is an infant would probably be co-extensive with the innkeeper's right of action, viz., be limited to such things as a jury should hold to be "necessary" for the infant considering his station in life.

The Damage done by a Horse.

The horse being as a rule a quiet and well-disposed animal, the owner is not liable for any injury done by it by kicking, biting or the like, unless it can be proved that he had a previous knowledge of his animal's faults, and the reader is referred for the law under this head to the chapter on the Sportsman and his Dog, as the principles there laid down are applicable in precisely the same way to a horse. Thus, where a horse which had previously shown a good temper got out of a field in which it was lying, and, straying on the road, there kicked a little girl, it was held that the owner was not liable for the injury caused (Cocks v. Burbridge, 1863).

On the other hand, where a horse is trespassing on another person's property, the owner is liable for any damage done by the horse in question out of viciousness, and in this respect the law is a little different to that applicable to dogs, for every man is bound to fence and keep his own horses and cattle in, but dogs are ordinarily allowed to stray about. Thus if A.'s horse jumps or breaks through the fence into B.'s field and kicks B.'s horse, or even if it bites or kicks B.'s horse through the fence, A. is liable for the damage (Lee v. Riley, 1865; Ellis v. Loftus Iron Company, 1875). The principle of these decisions appears to have been that the injury caused to the other horse was in each case the natural consequence of the trespass. Of course, if B. is liable by agreement or prescription to fence against his neighbour's cattle, as is sometimes the case, then A. would not be liable for the result of his horse trespassing on B.'s land.

Every man who goes hunting is liable for the damage he does to the land and fences over or through which he goes, and apparently the Master of the Hunt and the Hunt Committee (if any) are liable for all damage done by the Hunt servants and the members of the Hunt and other invited persons, and if the meet is publicly advertised it may be that he and they are liable for the doings of the whole concourse of people, but there would be no such liability on the part of the Master and Committee in respect of damage done by an ordinary member of the public unconnected with the Hunt who happened to be following the hounds, unless they had expressly or impliedly invited the public.

Racing.

It is hardly necessary to say that every race is governed by the particular rules under which it is run, whether they be those of the Jockey Club, the National Hunt Committee, or the special rules imposed by the stewards of the race. A person entering his horse for a race must abide by the rules, and if the rules provide that disputes are to be settled by the stewards, the decision of the latter is final. The stewards, in fact, are the proper persons to decide all disputes, and it appears to be their duty to appoint the judge. Their decisions, moreover, are not governed by such technical rules as apply to legal arbitrators: for instance, it has been held that the decision of two stewards in the absence of a third, and although the latter had not been apprised of the question at issue, is good and binding on the disputants (Parr v. Winteringham, 1859). Also the stewards may act although they are interested, unless there is a rule

to the contrary; for instance, a steward may sit to decide on a dispute although he himself had a horse in the race (Ellis v. Hopper, 1859).

An illustration of the powers of stewards at race-meetings is furnished by the case of Clarke v. Randall and others, which was before the Court of Appeal on the 15th May, 1903. The facts were that Mr. Randall had entered a mare in a Selling Plate at Redcar run under the usual rules; and the mare, winning the race, was put up for sale in the ordinary way.

The bidding ran up to 170 guineas, at which sum the auctioneer knocked down the mare to Mr. Clark. Mr. Randall disputed the sale on the ground that he also bid the same sum, and referred the matter to the stewards. The latter directed the mare to be resold, and she was accordingly put up again, and on this occasion was knocked down to Mr. Randall for 330 guineas.

Mr. Clarke disputed the second sale on the ground that the decision of the auctioneer on the first sale was final and the stewards had no power to order a resale, and brought an action against Mr. Randall and the stewards to enforce his claim. On the trial of the action before Mr. Justice Grantham and a special jury, the latter, to whom the question was left by the Judge, gave a verdict for the plaintiff (Mr. Clarke).

The defendants appealed, and the Court of Appeal held that the stewards were acting within their authority in ordering the resale, and that the mare had become the property of Mr. Randall, and they accordingly reversed the decision of the Court below and entered judgment for the defendants.

The stewards, however, are not omnipotent; they cannot waive one of the conditions of the race: for instance, in a Hunt Steeplechase, if there is a race for horses that have been regularly hunted with the hounds during the past season, the stewards have no power to admit a horse that they know has only hunted once, and if they do so, and on such horse coming in first award the stakes or prize to the owner, they and the clerk of the course, as stakeholder, may be sued for the stakes or prize by the owner of the second horse (Weller v. Deakins, 1824).

The owner of the second horse must lodge his objection in accordance with the rules, and if he subsequently brings an action he cannot raise any point that he did not raise before the stewards or judge who held the inquiry (Evans v. Pratt, 1842).

The clerk of the course, Treasurer of the Jockey Club, or other stakeholder has no right of action for unpaid stakes, but the winner may recover the money in the hands of the stakeholder and also against those who have run or entered horses and not paid their stakes (Walpole v. Saunders, 1825). If a horse be entered *bonâ fide* and afterwards be found to be disqualified, his owner may, unless the rules forbid, recover his stake on claiming it before it is paid over, but not if he knew his horse was disqualified; for instance, in a Maiden Plate Race the owner knowingly entering a horse that has run before cannot recover back his stake, even though he gives notice to do so before the race (Weller v. Deakins, quoted before; Goldsmith v. Martin, 1842).

What has been said above with regard to recovering stakes is subject to this, that if the staking merely

resolves itself into a wager between two parties, then it must be treated as any other bet—as a debt of honour. Under the Gaming Act, 1845, 8 and 9 Vict. c. 109, sec. 18, all contracts and agreements by way of gaming or wagering are declared to be null and void, and no action can be brought for recovering any sum of money or valuable thing alleged to be won upon any wager, or which shall have been deposited in the hands of any person to abide the event upon which any wager shall have been made; but there is a proviso that the Statute is not to apply to any subscription, or contribution, or agreement to subscribe or contribute for or towards any plate, prize, or sum of money to be awarded to the winner or winners of any lawful game, pastime, or exercise.

A wager has been defined as a contract to pay a sum of money or deliver some other thing upon the ascertaining of an uncertain event in which the parties have no interest other than the amount or value of the article wagered. That there should be a valid sweepstake under this enactment, it may be necessary that there should be three or more entries, and if A stakes 100 on his horse against 100 staked by B on his, that is a mere wager, which under the Statute the winner cannot recover; but it has, as far as we are aware, never been decided whether, where a race is advertised as a sweepstake and there are only two entries, such entries may be treated as a wager or not. If the two entrants got up the race between themselves it would clearly be a wager, but we venture to think that in an ordinary race-meeting the fact that there are only two horses entered for a particular race cannot affect the question, and that the

contract to pay the stakes to the winner would be quite as valid as if there had been half-a-dozen. There may, of course, be a triangular wager, and if three men agree amongst themselves to back their several horses against each other, the stakes would not constitute lawful sweepstakes within the meaning of the Act, or be recoverable at law by the winner.

With the Statute above quoted should be read the Gaming Act, 1892, 55 Vict. c. 9, by which it is enacted that any promise expressed or implied to pay any person any sum of money paid by him under or in respect of any wager which is made void by the Act of 1845, or to pay any sum of money by way of commission in respect of any such wager, or for any services in relation thereto or in connection therewith, shall be null and void, and no action shall be brought or maintained to recover any such sum of money.

At first sight it would seem under these two Acts that if two persons making a wager paid their stakes to a stakeholder, not only could not the winner recover the money, but neither party could recover his own stake back. The true state of the law as laid down by decided cases seems to be as follows: If two persons make a bet and stake their money with a stakeholder, as, for example, on a match between two horses arranged by the owners, either party may, either before the race is run, or even afterwards before the stakes have been paid over to the winner, call upon the stakeholder to refund his stake, and the stakeholder is bound to do so, and is liable to an action if he does not (Diggle v. Higgs, 1877; Burge v. Ashley, 1900). The latter case was one brought by the now somewhat celebrated

prizefighter against the proprietors of the *Sportsman* to recover a stake deposited to abide the event of a boxing-match which Burge lost. The *Sportsman* handed over the stakes to the winner, notwithstanding the fact that Burge applied for the repayment of his stake before it was paid over, and the Court held that he could recover the amount from the defendant.

If, however, the stakeholder has paid the money over to the winner of the wager before the other party has countermanded his authority, that is a perfectly good defence to the action. In the case last cited Burge gave the *Sportsman* notice not to pay over immediately after the fight, and before they had time to give the stakes to the winner.

There is apparently one other case in which a party cannot recover his stake—that is to say, if the *winner* goes to the stakeholder and claims both the stakes as the winner of the wager, and on the latter's refusal to pay sues him for them or sues for his own stake, the stakeholder can get off paying even the claimant's own stake on the ground that the party suing had, by claiming both stakes, ratified the wager, and had not (as he might have done) claimed his own stake as money deposited, and that the wager being bad at law, under the Act of 1845, no action lies (Savage v. Madder, 1867).

What the Act of 1892 has effected is to prevent an agent, who has backed a horse for another person and lost, recovering from his principal the amount put on for him. Prior to the passing of the Statute the commission agent proper stood in a better position than the book-maker who personally laid the odds. The latter had, of course, always to trust to the honour of persons betting

with him to pay their losings, except in the case of ready-money betting; but the agent who merely put money on for a client had a legal right of action if the latter did not repay him the amount lost, just as the client had a right to recover from the commission agent the winnings when actually received by the agent, less, of course, any commission payable, and subject to deduction in respect of losses on any other bets made. Now, however, the positions are altered, and the commission agent is, from a strictly legal point of view, in a somewhat worse place than the bookmaker. The latter has no right of action against the backers for unpaid bets, nor have they against him; but the commission agent, whilst he cannot recover from his client the amount he has staked for him, can still be made to pay over the winnings, the Act only depriving the agent of his former rights and not relieving him of his liabilities to account for profits made. Nor can the agent claim from the principal an indemnity against losses incurred but not actually paid (Levy v. Warburton, 1901).

It is perhaps typical of the honour amongst betting men in general that, as far as legal law reports show, no case has been tried since the passing of the recent Act to test the question whether a man employing an agent to make bets for him can recover from such agent the winnings on one or more horses without bringing into account the losings on others, or without paying the ordinary commission. The opinion is hazarded that the position of the parties is not altered in this respect, viz., that it is only the *net* amount of winnings that can be recovered by the principal. See, in support of this view, the case of Thwaites v. Coulthwaite, 1896, where a

partnership account was ordered to be taken between two bookmakers, though the Act of 1892 was not, it is true, referred to. However, in a more recent case Mr. Justice Darling laid it down that the Court ought not to order an account to be taken between bookmakers as being against public policy though the case in question was actually decided on other grounds (Thomas v. Day, 1908).

A further point arises where it is a ready-money agency and the principal has actually paid the amount of his bet to the agent in advance, and the horse wins, and the agent receives the odds from the bookmaker—can the principal recover from the agent the amount of his stake as well as the winnings? The money was clearly paid by him to the agent "in respect of a wager," but so was the stake in Burge v. Ashley before quoted, though in the latter case the money was not paid to the proprietors of the *Sportsman* in order that they should make a bet on behalf of the boxer, but merely as stakeholders, the two boxers having made the bet themselves; and the position of a stakeholder is quite different to that of an agent, who receives money for his principal after the bet is won. Suppose the bookmaker refuses to pay the bet: it is clear that the principal cannot recover the amount of the odds from his agent, the latter not having received them; there remains only the original stake, which we have supposed the principal deposited with the agent to bet with. It would seem that the Act is a bar to recovering it. How, then, can the fact that the agent has received payment from the bookmaker alter the position? We can only say that a strict reading of the Act would

seem to prevent the principal recovering the money paid by him to the agent, whilst outside or in spite of the Act he can still recover the actual winnings received by the agent from the bookmaker—which sounds a rather absurd result, and one which Judges would hesitate to arrive at.

In a case where a person deposited money with an outside broker as "cover" in Stock Exchange transactions which were admittedly gaming transactions, and the "cover" was not required to be resorted to, there having been no differences to pay, it was held that the depositor could prove for the amount in the broker's bankruptcy (*re* Cronmire *ex parte* Waud, 1898). This, however, seems in principle to be a somewhat different case to that of a ready-money transaction with a commission agent, the money in the former case never actually being laid out.

It must, of course, be understood that anyone paying money for a friend is in precisely the same position as a professional commission agent. Indeed, so far-reaching is the Statute in this respect that if one lends a friend money to bet with, or even to pay his bets already lost, one cannot recover it; nor if the friend went bankrupt could a proof be put in for the amount, and the fact that a promissory note is given for the amount advanced does not improve the lender's position (Tatham v. Reeve, 1893; Saffery v. Mayer, 1901). Moreover, if a man lends a friend money to bet with, the fact that the latter wins and receives both stakes doesn't affect the position; the lender can't get back his own again if the "friend" decrees that he shan't. In this way Plimmer got out of paying £500 to his friend Carney.

Plimmer wanted to box Corfield for £500 a side, but hadn't the money to put up, so he asked Carney to lend him that sum; Carney staked the money for him on the understanding that no claim should be made for it if he lost the match, but if he won the money was to be repaid. Plimmer won, and received the two £500 stakes. As he refused to pay Carney, the latter brought an action for his £500, but the Judges held he had no case, the Statute of 1892 having taken away his right of action (Carney v. Plimmer, 1897).

Where two persons have a *bonâ fide* dispute as to whether a bet was made between them or as to whether any sum is due from one to the other as a debt of honour arising out of a betting transaction, they must find some tribunal other than a Court of Justice to settle the dispute for them. For it has recently been laid down that a Judge ought to refuse to try an action as soon as it appears that the matter in dispute is a wager, and this whether the defendant in the action sets up the Gaming Acts as a defence or not (Luckett v. Wood, 1908).

Where, however, a bet is admitted to have been lost or money to be due in respect of a wager and the loser or debtor asks for time to pay, the question of a *new consideration* for the promise to pay may arise, and if the bookmaker or winner gives what the Court considers to be a valuable consideration for the promise to pay at a future date, then (when that date arrives) the money can be recovered.

Thus, where one bookmaker had lost money to another and the loser requested the winner to give time for payment and not to mention the matter to

any of his (the loser's) customers, the Court of Appeal held that the giving of time, coupled with the forbearance to mention the default (which was obviously a matter of considerable importance to the loser, being himself a bookmaker), was a sufficient new consideration to support the action for the debt. (Hyams v. Stuart King, 1908, a decision of Sir Gorell Barnes and Lord Justice Farwell; Lord Justice Fletcher Moulton dissenting.)

In like manner, of course, the abstaining from posting, as a defaulter, a bookmaker, or a member of a sporting club as a defaulter, if done at his request, and coupled with a promise by him to pay at a future date, will form a good consideration and entitle the winner to recover. It would even seem that, in the opinion of Mr. Justice A. T. Lawrence, where the loser is a bookmaker and a member of a sporting club, the giving time for payment (at the loser's request) of a cheque for the bet which had been dishonoured, coupled with forbearance, to report him as a defaulter, would be a good consideration, although there was no express request by the loser to refrain from reporting or posting, the decision apparently resting on the ground that such request was in the circumstances implied from the mere request to hold over the dishonoured cheque (Goodson v. Baker, 1908). See also on this point the judgment of Buckley, L.J., in Goodson v. Grierson, 1908, and for a case in which Alverstone, L.C.J., held that there was no sufficient consideration for a fresh promise to pay, although there had been an express request to keep the matter private (Ladbroke v. Buckland, 1909).

On the other hand the Lord Chief Justice has held that an express request complied with by the bookmaker not to post his client as a defaulter will form a good consideration to pay at a later date, although the client is not a bookmaker and not a member of Tattersall's or of any sporting club (Hodgkins v. Simpson, 1909).

With regard to bills, notes, and cheques given in respect of money lost upon horse races, the Gaming Act, 1835, declares (Sec. 1) that they shall be deemed to have been given for an illegal consideration. The result is that the person receiving any such "paper" cannot recover the amount by action any more than he could directly recover the amount of the wager; but if he negotiates it before it is due, or, in case of a cheque, within a reasonable time after date, to any person paying value for it in good faith without notice of the illegality of the consideration, the latter can recover from the person giving the bill, note, or cheque . . . . but the Act further provides that if payment *is* enforced by such third party, the person who has to pay can in his turn recover from the very man to whom he gave the bill, note or cheque! (Sec. 2.)

Thus, A. makes a bet (on a race) with B. and loses, and, being unable to pay on settling-day, gives B. a three-months' note payable to B. or order. B. knows he will not be able to sue A. on it, so he takes it to C. to discount, being careful not to tell C. what it was given for. C. can, when the note is due, sue A. on it, but if A. pays, he can, if he likes—he generally doesn't—recover the amount back from B. If, however, C. did not give

value for the note, *or* if he knew it was given to B. in payment of a bet, C. could not recover from A., and supposing B. were (to C.'s knowledge) a bookmaker, it would probably be C.'s duty to enquire whether the note was given in respect of a betting transaction; otherwise a knowledge that it was, or at least a want of good faith, might be presumed which would entirely upset his right of action (see Woolf v. Hamilton, 1898).

It might be mentioned that the Betting and Loans (Infants) Act, 1892, makes it a misdemeanour punishable on summary conviction or on indictment by fine or imprisonment, or both, to send a letter or circular to an infant inciting him to make a bet, and if such letter or circular is sent to a school, college or university, the sender is presumed to know that the person receiving is an infant, unless he proves he had reasonable grounds for believing him to have been of full age.

What is a "Place" within the Meaning of the Act?

The Act is the Betting Act, 1853, which by its first section, makes it a misdemeanour to keep or use a house, office, room "or other place" for the purpose of betting with persons resorting thereto, or for the purpose of persons resorting thereto betting with each other; or for the receipt of any money deposited as a wager (with the owner, occupier, or person using the house, &c.) on the result of any horse or other race, game, sport, &c. The penalty imposed on the owner, occupier, manager, &c., using or knowingly

permitting the using of the house, office, or place for the purposes aforesaid is a fine up to £100 or imprisonment (Sec. 3).

Many and varied have been the cases in which the Courts have had to determine whether a place is a "place" within the meaning of the Act. The Hyde Park "bookie" was held to be in a place when he frequented a particular clump of trees; a field of three acres was held to be a place. The outside "bookie" was convicted for having a stool or umbrella; the inside "bookie" was prosecuted and convicted at the instance of the Anti-Gambling League (Hawke v. Dunn, 1897). This at last roused the opposition, and Mr. Powell, a friendly shareholder in the Kempton Park Racecourse Company, brought a test action against the Company to decide on the legality or otherwise of its "enclosure," an action which went up to the House of Lords and there laid the foundation of a new interpretation of the Act, 1899.

In the last-mentioned case all the older decisions were exhaustively reviewed, and many of them, including Hawke v. Dunn, practically declared to be bad law. However, the exact decision in the case under consideration did not turn so much on the question what is physically speaking "a place" within the words of the Act, as upon what is meant by the using of a place or permitting it to be used for the purpose of betting, and the Lords held that the fact that the Kempton Park Company knowingly allowed bookmakers in the ring and allowed, or did not attempt to prohibit, the betting that went on, did not bring the Company within the Act or render it liable to the penalties for using or permitting

the use of a place for the purpose of betting; and further (in overruling Hawke v. Dunn), that a bookmaker using the enclosure for the purpose of betting would not be liable either, apparently on the ground that he has no control over the ring, which, therefore, would not be a place as far as he was concerned. The case is chiefly remarkable (as Lord Davey, who, with Lord Hobhouse, dissented from the judgment, said) for the great divergence of judicial opinion on the question: in all twenty-two judges gave their views in the two cases of Hawke v. Dunn and Powell v. Kempton Park, of whom eight certainly, and possibly nine, were of a contrary opinion to that finally laid down.

Closely following on the Kempton Park case came that of "Bob Patch, London" (Brown v. Patch, 1899). In that case the defendant had the usual board of the outside "bookie," with a box or stool close beside it, from his elevated position on which he from time to time shouted the odds. The Justices at the Petty Sessions, on the strength of the Kempton Park case, refused to convict; but a Divisional Court of the King's Bench held that they were wrong, and sent the case back to them that they might do so. The defendant was clearly not an occupier within the meaning of the Act; was he a user of a place? The user of a place must, it was held, be analogous to that of an occupier occupying an office at which he is prepared to bet with persons who come there, and the Judges lay down this rule: if the apparatus, whatever it is, used by the bookmaker is merely used as an advertisement of his trade or profession, it will not bring him within the Act; but if it is used for the purpose of indicating that there he is for the

time being established, and there he is to be found by persons wanting to bet, it will constitute "a place" within the meaning of the Act and render him liable to prosecution accordingly.

The moral seems to be that, if the outside "bookie" must have a board, he'd better have a light one and carry it over his shoulder, or in some other convenient way.

Any person frequenting or loitering in a street or public place for the purpose of bookmaking, betting, wagering or paying or receiving or settling bets, whether on his own behalf or as agent for another, may now be prosecuted under the Street Betting Act, 1906.

The limits of our space prevent us discussing the numerous cases in which Mr. and Mrs. Stoddart and Mr. Stoddart, Junior, the proprietors from time to time of *Sporting Luck* and other papers, have figured, to the general advantage of the lawyers. Suffice it to say that the latest decisions obtained by the Anti-Gambling League lay it down that a person may be convicted of using a place for the receipt of money for the purpose of bets (under the latter part of Section 1 of the Act referred to above), although he doesn't actually receive it there, provided an essential part of the betting transaction took place there, and that the person charged was shown to have received the money though not at that particular place (Stoddart v. Hawke, 1902), a curious decision certainly. The Stoddarts, or one of them, issued coupons from the office of *Sporting Luck*, in London, entitling the holder to go in for a "guessing competition," in connection with races, football

matches, etc.—a competition which was clearly a huge gamble. The money was sent by the competitors to Stoddart's office in Middleburg, Holland, and the postal orders sent, apparently to the amount of £2,000 or £3,000 a week, were returned to London and cashed by or on behalf of the Stoddarts; but it was not proved that any money actually went to the *Sporting Luck* office there. Notwithstanding the absence of such proof, they were held rightly convicted of having kept or used the London office for the purpose of receiving money for bets there. The decision was approved by the Court of Appeal in the same year (Lennox v. Stoddart, Davis v. Stoddart, 1902).

CHAPTER XXVI

THE SPORTSMAN AND HIS ROD

The Law governing Anglers

The idea of compressing into one chapter the laws relating to angling seemed to us, in view of the multitude and complexity of the Acts and Bye-laws dealing with the subject, so utopian, that when it was represented to us that such a chapter would be found very acceptable to numerous readers, we at first declined to entertain it, and only at last consented to attempt the task at the urgent request of our publishers. It must be understood, however, that the following details only profess to be a mere outline of the subject and in no sense a complete exposition.

We have seen in a previous chapter that the soil of navigable rivers and inlets, as far as the tide ebbs and flows, was originally vested in the Crown, and is still presumed in every case to be so, unless some private person can prove a title either by Crown grant or by evidence of acts of ownership for such length of time as will lead the Court to presume a lost Crown grant. The water as far as the tide ebbs and flows, which we subsequently shall for brevity refer to as public waters, is open to all the subjects of the Crown for the purposes of navigation, subject, of course, to the payment of any dues and observance of any regulations imposed by authority of Parliament. The right of fishing in public

waters was also originally open to all the Crown's subjects and is so still, save in those cases where by a Crown grant dating from a period anterior to Magna Charta the fishing has become vested in private persons (Malcolmson v. O'Dea, 1863). A *modern* Crown grant is sufficient to transfer the ownership of the soil to a private person, but no grant since Magna Charta can take away the public right of fishing in public waters. However, a Crown grant of more recent date than the great Charter, purporting to grant to a subject an exclusive right of fishing in public waters, may be held to be merely confirmatory of an earlier grant which has been lost, and as such evidence of the existence of a private right dating from before the Charter (see Fitzhardinge v. Purcell, 1908).

Unfortunately for the public, the fishing in a very large proportion of the public waters is, in fact, in private hands, as the result of ancient grants existing or presumed. In such cases the owner of the fishing rights is said to have a "several fishery" in the public water in question.

The term several fishery is used to express a private right of fishing in any water, public or private. All waters above the limits of the flow of ordinary tides and all inland lakes are presumably private waters, and the exclusive right of fishing therein belongs, with few exceptions, to the owner of the soil, unless it has been granted away from the land by deed by such owner or some predecessor in title. In the case of rivers above high tide the presumption is, until the contrary is proved, that the soil to the centre line belongs to the owners of the land on either side.

There are some exceptional cases, as where non-tidal waters were anciently waters of a manor. In such cases the soil, as was the case with all other wastes, would be vested in the Lord of the Manor, possibly subject to rights on the part of the tenants of the manor to take fish for their own consumption, such right being called "common of piscary."

In such cases it is important to ascertain whether by the Inclosure Act authorising the inclosure of the water of the manor in question, and the award made thereunder, the soil was allotted to the lord or any other person, and if so, whether the rights of the tenants, if previously any existed, were preserved. There are still some cases where common of piscary exists, but they are believed to be very few. It may be mentioned that although evidence of the exercise of such rights by tenants of a manor as far back as living memory goes may be sufficient to support a claim to common of piscary, yet no such claim by the inhabitants or tenants of a manor to take fish for the purpose of sale can be legally established (Earl of Chesterfield v. Harris, 1908).

As already stated, these commonable rights are quite exceptional, and where they exist the persons who can exercise them are strictly limited to tenants of the manor. There appears to be no way, otherwise than by Act of Parliament, in which the public generally can acquire a right to fish in private waters, except by leave and licence of the owners. The law is most clear that there is no public right of fishing in a non-tidal river, even though navigable (Pearce v. Scotcher, 1880; Smith v. Andrews, 1891); and it is equally clear that evidence

of the exercise by the public from time immemorial of rights of fishing in non-tidal waters, will not establish a right if the owner of those waters sees fit to prohibit the public fishing there (Bland v. Lipscombe, 1854).

Thus in a case where a river had been made navigable by a company in the reign of Charles II., and the public had ever since fished there without interruption, it was held that the owners of the soil had not parted with their exclusive right of fishing, and having put up notice boards announcing that the fishing was private, they could prosecute anyone subsequently taking fish there (Hargreaves v. Widdams, 1875).

A right of fishing, like any other right of sporting, can only be granted (apart from the soil over which the water flows or rests) by deed, but if an unsealed agreement is made purporting to let a right of fishing, and the person to whom it is agreed to be let actually exercises the right, he can be sued for the rent, as we have seen he can be in a similar case where shooting rights are let and exercised (Holford v. Pritchard, 1849).

If, however, the soil under the water is itself let and at a rack rent (*i.e.* full value), or not less than two-thirds of a rack rent, a tenancy from year to year or for a term not exceeding three years from the letting, can be legally created by word of mouth, and the right to the fishing will, of course, pass with the soil. So if land through which a non-tidal river runs is leased, the lease will pass the river and the exclusive right of fishing, unless reserved (Jones v. Davies, 1902).

The law as to the rating of sporting rights, which includes rights of fishing, has already been dealt with in a previous chapter.

The general law relating to fishing rights and fishery protection, in this country, is mainly contained in the following Acts of Parliament. The Salmon Fishery Act, 1861; The Salmon Fishery Act, 1865; The Salmon Fishery Act, 1873; The Salmon Fishery Act, 1876; The Fisheries (Dynamite) Act, 1877; The Freshwater Fisheries Act, 1878; The Freshwater Fisheries Act, 1884; The Freshwater Fisheries Act, 1886; The Salmon and Freshwater Fisheries Act, 1886; The Fisheries Act, 1891 (Sec. 13); The Salmon and Freshwater Fisheries Act, 1892; The Salmon and Freshwater Fisheries Act, 1907; and The Larceny Act, 1861 (Secs. 24 and 25).

The rivers and broads of Norfolk and Suffolk, with the exception of the rivers flowing into the sea south of Covehithe Coastguard Station, which have since been excluded, are the subject of a local Act, the Norfolk and Suffolk Fisheries Act, 1877, and some of the sections of the Freshwater Fisheries Acts do not apply to this district. The Thames and the Isis have always been governed by special Acts, that now in force being the Thames Conservancy Act, 1894. The Tweed and its tributaries likewise are under local Acts and the English Fishery Acts do not extend to them. There are also local Acts which partially govern the fishing (other than salmon fishing) in the Severn and Verniew, the rivers flowing into the Solway Firth and the rivers flowing into Milford Haven, but their provisions have been, in the main, superseded by the general Fishery Acts and Bye-laws made thereunder.

The policy of the general Acts above mentioned has been to create different fishery districts throughout the country, and to put the administration of the various

provisions for the protection of fishing into the hands of Boards of Conservators who are elected for the several districts.

The first Acts passed related merely to salmon and salmon fisheries; then later trout and char were brought under protection, and finally all fresh-water fish were to some extent, at any rate, brought within the purview of the Acts.

The power of creating fishery districts, which was formerly vested in the Home Secretary (Sec. 4 of Act of 1865), and afterwards in the Board of Trade, was transferred to the Board of Agriculture and Fisheries by the Board of Agriculture Act, 1903. The powers as to formation of districts for salmon contained in the Acts of 1865 and 1873, were extended to the formation of districts in all waters frequented by trout and char, by Sec. 6 of the Act of 1878, and in waters frequented by other fresh-water fish, by Sec. 2 of the Act of 1884. The Act of 1907 has introduced an alternative method of creating and administering fishery districts; its provisions are referred to more in detail hereafter, and for the present we confine ourselves to the consideration of districts formed under the older Acts.

Application for the formation of a district must be made by a County Council (to whom the powers given by the Acts to Justices in Quarter Sessions were transferred by the Local Government Act, 1888, Sec. 3 xiii).

Once the application is made, the Board of Agriculture and Fisheries can fix the district (within the limits of the county or counties making application) as it likes, without regard to any limitations suggested by the applicants (Reg. v. Sir George Grey, 1866). The Board has

also power to alter the boundaries of a fishing district on application of the conservators of the district (Sec. 5 of Act of 1873).

The district when formed is defined by a certificate under the seal of the Board (Sec. 5 of Act of 1865), and usually comprises a certain named river or rivers, and its or their tributaries or defined parts of same, and the other rivers and streams which flow into the sea between certain points, with or without all other natural sheets of water (lakes) within the defined area; the portions of the rivers included are often defined as being those parts within the limits of a named county or counties; in many cases also the sea coast between certain points and the water opposite same, up to the three-mile limit recognised by international law is included in the district. The certificate of the Board of Agriculture and Fisheries, or its predecessors in power (Board of Trade or Home Secretary) is conclusive as to what area is comprised in the district.

It is important to note, however, that artificial waters, such as canals and reservoirs constructed for the purpose of storing water for the supply of a town are not within the scope of the Acts (other than the penal provisions of the Larceny Act hereafter mentioned), and over such waters the conservators for the district in which they are geographically included have no jurisdiction. The proprietors of the artificial waters in question (*e.g.*, the Canal Companies or Municipal Corporations), have exclusive control of the fishing in them (Harbottle v. Terry, 1882. Stead v. Nicholas, 1901).

Where a fishery district is entirely within the limits of one county, the County Council determines the

number of and appoints the conservators for the district, other than ex officio conservators, as to whom further mention is made later. Where a district is partly in one county and partly in another, the procedure is for each County Council to appoint three members, to form, with the like number of members appointed by the other Council or Councils, a joint fishery committee who determine the number of conservators to be elected for each county, and appoint the first members, after which the committee dissolve. In either case the conservators hold office for a year, and are subsequently elected annually by the County Council or Councils interested (Secs. 6 to 15 of Act of 1865).

The Board of Agriculture and Fisheries may, on the application of any County Council, vary the proportional representation on a joint board of conservators (Sec. 9 of Act of 1873).

Besides the elected conservators, there are certain persons who are entitled to act as conservators ex officio. These are of two classes:—First, the owner *or* occupier (Sec. 26 of Act of 1873 as extended by Sec. 6 of the Act of 1878 and Sec. 2 of the Act of 1884) of a fishery or fisheries in the district which is or are assessed to the poor on the basis of a gross estimated yearly rental of not less than £30, is entitled to act as ex officio conservator. Only one of them, and not both, however, can act, and if there are two or more joint owners or occupiers of the same fishery, only one of them can act, and, unfortunately, the Statute gives no indication as to whether the owner is entitled in preference to the occupier if both desire the honour of being conservator, or as to which of two or more joint

owners or occupiers will be entitled to sit on the fishery board. It appears to be in every case a matter for agreement between owners and occupiers, or failing agreement, it is probably the one who first makes the declaration as to qualification prescribed by Sec. 28 of the Act of 1873.

Of course, it is only where the fishing rights are separately assessed from the land through which the river passes, or which surrounds the lake that the owner or occupier can claim to sit.

Secondly, the owner of land of an annual value of not less than £100, with a frontage of not less than a mile (in ascertaining the distance, both sides are counted) to some river in the district frequented by either salmon, trout, char, or any fresh-water fish in the water adjoining which frontage the owner has the right of fishing, can, on payment of licence duty for fishing for *salmon* within the district and making the declaration referred to above, claim to act as an ex officio conservator. The law is not quite clear as to whether the owner of land on one side only of a river, who has the fishing in only half the river can qualify, but the better opinion would seem to be that he can.

There seems no objection to a person otherwise qualified claiming to pay the lowest possible licence for taking salmon in order to entitle him to act as conservator, even though it be a district in which there are no salmon rivers at all. The maximum licence that can be imposed for using a putt (a kind of cone-shaped basket) for taking salmon is fixed by the schedule to the Act of 1873 at 3s. 6d., and although such an instrument (being a "fixed engine") cannot be lawfully used except in

places where it was by grant, charter, or immemorial usage, in use before the passing of the Act of 1861 (Sec. 119 that Act) it would seem that the owner of £100 a year land with a mile of frontage might claim to pay that licence to qualify as a conservator, although he could not lawfully use a putt.

If any person otherwise entitled to act as an ex officio conservator is a minor, idiot, lunatic, married woman, or is a corporation, company, or fishing association, provision is made for the guardian, trustee, committee, husband, or one of the members of the corporation, company, or association, or the attorney or agent of such, to act as conservator in place of the person otherwise entitled.

Provision is further made for the election in districts containing public waters by those persons taking out licences to fish for salmon otherwise than by rod and line (in other words by nets) of representatives on the board of conservators, one representative being allowed for every £50 or part of £50 over any multiple of £50 of the aggregate of such licences paid during the preceding fishing season (Sec. 29 of Act of 1873).

The conservators in each district are a body corporate with a common seal, and amongst their other rights and duties they may appoint and pay water bailiffs, issue licences for taking salmon, trout or char at rates not exceeding those prescribed by Statute and to be approved by the Board of Agriculture, take legal proceedings in respect of breaches of law, and do such acts as they may think necessary to improve the fisheries and stock the waters, and with the approval of the Board of Agriculture make bye-laws for the regulation of the fishing which

may, amongst other things, alter the statutory close times for salmon, trout and char, exempt all or part of the district from the statutory close time for other fresh-water fish, and determine the time during which it shall be lawful to use a gaff in connection with a rod and line (Secs. 21, 27 and 33 of Act of 1865, Sec. 39 of Act of 1873, Sec. 4 of Act of 1876, Secs. 10 and 11 of Act of 1878, and Sec. 2 of Act of 1884).

A duly appointed water bailiff has in his district for the purpose of the several Fishery Acts the powers and privileges of a constable, and is empowered amongst other things to search any boat used in fishing or which there is reasonable cause to suspect contains any salmon or fresh-water fish, search and examine any baskets, bags, or instruments used in fishing, or in carrying fish by persons whom there is reasonable cause to suspect of of being in possession of fish illegally caught, and seize all fish or instruments forfeited under any of the Fishery Acts. He may also, under a special order signed by the chairman of the Board of Conservators, enter and traverse any lands adjoining a river, but not a dwelling-house or the curtilage thereof, or decoys or land used exclusively for the preservation of wildfowl, for the purpose of preventing any breach of the Acts. Any such order remains in force two months (Secs. 36 and 37 of Act of 1873 and Sec. 3 of Act of 1884).

A water bailiff may also under certain circumstances obtain from a Justice of the Peace a warrant to search for fish believed to have been illegally taken, or to enter upon any land for the purpose of detecting breaches of the Acts (Sec. 34 of Act of 1861, and Sec. 31 of Act of 1865).

Licences.

No one may in a fishery district take salmon, trout, or char without a licence, assuming, of course, the regulations of the conservators provide for licences for the fish in question. This, it must be clearly understood, applies to private as well as to public waters. A man requires a licence to fish in his own water as much as in public waters. But, as before mentioned, this does not apply to artificially-constructed waters, such as corporation reservoirs; in such the fisherman pays only such fee as the corporation itself sees fit to levy. The licence for a single rod and line for a season may not exceed for salmon, £1 10s. 0d., and for trout or char, 10s. (Schedule to the Act of 1873). Such licence is not transferable.

A licence to fish for salmon will cover trout and char fishing. The scale of licences may be varied in different parts of the same district, and licences for trout or char may be granted at smaller rates for a day, week, or part of a season (Sec. 21 of Act of 1873, and Sec. 7 of Act of 1878). A reference to these sections will show that there is no express power to issue short term licences for salmon, but many Boards of Conservators have, with the approval of the Board of Agriculture and Fisheries (or previously of the Board of Trade or Home Secretary), adopted scales which include salmon licences (rod and line) for a day, week or month.

Any person having the exclusive right of fishing in any river or part of a river may obtain from the conservators a general licence which will entitle him to take salmon, trout, or char (as the case may be) in any legal manner, in such river or part of it, but nowhere else; the

Conservators, with the approval of the Board of Agriculture, fix the amount of the general licence duty according to the productiveness of the fishery.

There is no power under the Acts to require a licence for other fish, but if a person is found fishing in waters frequented by salmon, trout or char it will be a question of fact for the justices, if he is prosecuted, to find whether he was actually fishing for either of those three classes of fish.

The penalty for fishing with rod and line for salmon, trout or char without a licence is not less than double the amount to be paid for the requisite licence, and not more than £5 (Sec. 35 of Act of 1865). A person holding a single rod licence and fishing with more than one rod at once is liable to conviction (Combridge v. Harrison, 1895). A person fishing without a licence (at any rate in a district which comprises salmon rivers) may be proceeded against alternatively under Sec. 22 of the Act of 1873 (as extended by Sec. 7 of the Act of 1878) which imposes a penalty for taking, killing, or attempting to take or kill salmon, trout or char otherwise than by a properly licensed fishing weir . . . instrument, net or device, of not exceeding £5, with the addition of not exceeding £1 for every salmon, trout or char caught. There is a proviso to this section that it is not to extend to the use of a gaff or landing net as auxiliary by a person holding a rod licence.

It is perhaps important to note that this last quoted section makes it illegal for a person holding a rod and line licence to catch or attempt to catch a salmon, trout, or char, without having first hooked it. For example, tickling trout is clearly illegal in districts where trout

licences are issued (at any rate, where the district includes salmon rivers), though not in districts where no such licences are in force. So would be the killing of a fish with a stick, even though it were previously injured and unlikely to recover, and the taking of a dying trout by hand from a poisoned stream is an offence within the sections (Stea v. Tillotson, 1900). Indeed it would seem that in a fishery district where trout licences, for instance, are required, it is illegal for an owner of a private stream, having only a rod and line licence, to net trout for the purpose of transferring them to other waters.

This seems to be recognized by the recent Acts dealing with the Usk and Wye Fisheries, hereinafter referred to, which expressly authorize the netting of fish for the purpose of stocking.

It is usual also for Boards of Conservators to embody in their bye-laws provisions prohibiting certain modes of taking trout (or all fresh-water fish), and not infrequently a rod and line is the only method allowed, the penalty for breach of the bye-law being not exceeding £5.

In a salmon fishery district, any person holding a licence for taking salmon in the district, on production of his licence, any conservator on production of a certificate of his being such, any water bailiff on production of his appointment, may require any person fishing to produce his licence; failure to produce entails a penalty of not exceeding £1 (Sec. 37 of the Act of 1865). In the case of salmon licences the minimum penalty for a second similar offence is 10s., and a third conviction necessitates the maximum penalty of £1, whilst a second conviction entails also a forfeiture of the convicted person's licence

(Secs. 56 and 57 same Act). Sec. 7 of the Act of 1878, provides that in a district where trout or char licences are issued, Sec. 37, as well as certain other sections of the Act of 1865, shall be construed as if the words "trout or char" were inserted in the latter section after the word "Salmon." As a matter of fact, the word "salmon" does not appear in Sec. 37, and it is somewhat doubtful therefore whether the provisions of that section do extend to districts where only trout or char licences are issued, but probably they do (see Sec. 2 of the Act of 1878), coupled with Sec. 7. In any event it seems that Sec. 56, as to minimum penalties for second and third convictions and forfeiture of licence, does not apply to trout or char fishing.

Close Times.

There is not, as in the case of game, a universal close time for taking different classes of fish throughout the country. Certain times are fixed by the Acts, but within certain strict limits each Board of Conservators may alter the times (at least as to salmon, trout, or char) for its own district.

In the absence of alteration, the statutory times during which fish may not be taken with rod and line, whether in a fishing district or elsewhere, are as follows :—For salmon, from 2nd November to 1st February, both inclusive (Sec. 17 of Act of 1861). For trout or char, from 2nd October to 1st February, both inclusive (Sec. 64 of Act of 1865; Sec. 18 (7) of Act of 1878).

For other fresh-water fish (not including the somewhat rare fish pollan), from 15th March to 15th June, both

inclusive; but a person may angle at any time in private waters with the leave of the owner; and a Board of Conservators, with the consent of the Board of Agriculture, may, as regards all or any fresh-water fish (not being salmon, trout, or char), exempt the whole or part of the district from this close time (Sec. 11 of Act of 1878).

A list of the districts in which no time is in force for other fresh-water fish is appended to this chapter.

To excuse angling for fresh-water fish (not including salmon, trout, or char), in private waters in the close season, it is not enough to prove leave from the occupiers of land adjoining the river or stream fished in, since the Act of 1873, which is read with that of 1878, defines "owner" as the person receiving the rents of the property, or who would receive the same if the property were let and occupied as the person for the time being in possession. (See Sec. 4 of Act of 1873; Swanwick v. Varney, 1882). Probably if a legal letting of the river or stream, or the fishing, to the occupier were proved, it would be held to constitute leave by the owner for the tenant and all persons authorized by the latter to fish.

The limits within which conservators by their bye-laws, confirmed by the Board of Agriculture, may vary the close times for rod fishing for salmon, trout, and char, are as follows:—

For salmon, the close time must be not less than ninety-two days, and must begin not later than 1st December (Sec. 39 (1) of Act of 1873).

It is at least generally conceded that this is the effect, as it is certainly the intention of the section

quoted; but it may be open to doubt whether the section does actually give any power to vary the close time, when the words of the section are compared with the definition clause in Sec. 4. However, this is a matter of too technical a nature to discuss in the limits at our disposal; and the section has been acted on by numerous Boards of Conservators.

For trout and char, the close time must not be less than one hundred and twenty-three days, and may begin on the 2nd September or on any subsequent date not later than the 2nd November (Sec. 4 of Act of 1876, Sec. 10 of Act of 1878).

A list is given at the end of the chapter of districts where the close time has been varied.

The penalty for fishing during close time fixed by Statute, where the statutory time is in force is:—For salmon, not exceeding £5, with a further sum not exceeding £2 for each salmon actually taken; for trout or char, not exceeding £2; and in either case the fish taken is forfeited (Sec. 17 of Act of 1861, Sec. 64 of Act of 1865, as extended by Sec. 18 (7) of Act of 1873, and Sec. 5 of Act of 1878).

If the close time for trout or char is altered by bye-laws, then such bye-laws may impose a penalty not exceeding £5, but nothing is mentioned about forfeiture of fish caught (Sec. 39 of Act of 1873 and Sec. 4 of Act of 1876). With regard to salmon, however, it is doubtful whether the statutory penalty mentioned above, including forfeiture of fish taken, may not be sued for instead of a penalty under the bye-laws, notwithstanding the alteration of the statutory close time by bye-law. It is clear that in case of fishing other than with rod

and line it may be, but in the case of rod and line fishing it is doubtful (see the definition clauses in Sec. 4 of the Act of 1873). If the penalty fixed by Statute is applicable, and proceedings are taken under the section (17 of Act of 1861) and not under the bye-law, not less than half the maximum can be imposed for a second like offence, and not less than the maximum for the third (Sec. 57 of Act of 1865). It was probably intended that these minimum penalties and forfeiture of licence should also apply to second and subsequent offences against bye-laws, under the Act of 1873 (see Sec. 18 (5) of the latter Act, read with Sec. 57 of the earlier one), but the wording is not apt for the purpose.

The penalty for angling for other fresh-water fish during the close season, either in public waters, or in private waters without the leave of the owner, is not exceeding £2 (Sec. 11 of Act of 1878).

Although somewhat beyond the scope of this chapter, it may be mentioned that, except as varied by bye-laws, the close time for taking salmon, *otherwise than by rod and line*, is from 1st September to 1st February, both inclusive, except taking with putts or putchers, for which the close time is invariably 1st September to 1st May; and there is a weekly close season which (unless varied) begins at noon on Saturday and ends at 6 a.m. on Monday (Secs. 17 and 21 of Act of 1861), and conservators have power to prohibit netting at night (Sec. 39 (12) of Act of 1873).

Penalties are also imposed on persons buying, selling or having in possession for sale, any salmon, trout or char during the close season.

General Offences.

It is an offence to wilfully take, kill, injure, or attempt to take, or to have in possession any unclean or unseasonable salmon, trout or char, unless taken for artificial purposes with the consent of the conservators. The penalty is not exceeding £5, plus not exceeding £1 for each fish and forfeiture of the fish (Sec. 14 of Act of 1861 and Sec. 18 (8) of Act of 1873). Anyone unwittingly taking such a fish by rod and line will be liable to the penalty unless he puts the fish back.

The using of fish roe of any kind of fish for the purpose of fishing is prohibited under a penalty of not exceeding £2 and forfeiture of the roe; and the like penalty is imposed on anyone buying, selling, or having in possession (without reasonable excuse) the roe of salmon, trout, or char, except possession for artificial propagation, or other scientific purposes, with the consent of the conservators (Sec. 9 of Act of 1861 and Sec. 64 of Act of 1865).

Although there is no prohibition against angling at night (except in places governed by special Acts, such as the Thames, where night fishing in a great part of the river is prohibited), it is illegal in fishing districts to use any *light* to attract salmon, trout, or char, and it is illegal by day or night to use an otter lath or jack, gaff (not being used as auxiliary to rod or line), spear or snare or other like instrument for the purpose of catching or killing salmon, trout, or char, or to have a light or any such instrument in one's possession for the purpose (Sec. 8 of Act of 1861, Sec. 64 of Act of 1865, Sec. 18 (1 and 7) of Act of 1873, and Sec. 5 of Act of 1878); and even with regard to a gaff, it may only be

used in a fishery district for taking any fish when not prohibited by the bye-laws, and the time during which it shall be lawful to use it as auxiliary to a rod and line may be prescribed (Sec. 39 (9) of Act of 1873).

The penalty for breach of the statutory prohibition is not exceeding £5 and forfeiture of the instruments; for a second offence one half; for a third, the maximum must be imposed, or in the alternative, not less than one month nor more than six months' imprisonment; and a second conviction forfeits the licence held (if any). (Secs. 56 and 57 of Act of 1865, and Secs. 18, 4 and 5, of Act of 1873). Possibly the expression "otter lath, or jack" may not be familiar to our readers. Fortunately it is defined by Sec. 4 of the Act of 1873. It means "any small boat, vessel, board, or stick, used for the purpose of running out baits, artificial, or otherwise, across any portion of any lake or river, and whether used with a hand line, or as auxiliary to a rod and line, or in any other way."

There are further penalties imposed by the Acts for putting poison, lime, or other noxious material in water with intent to destroy fish, or using explosive substances for the purpose of destroying fish. The Fisheries (Dynamite) Act, 1877, was passed expressly to impose a penalty on using explosive substances for this purpose in public waters. The Malicious Damage Act, 1861, had already made it an offence to do the like in private waters.

The offence of unlawfully taking fish in private waters, *i.e.*, without leave of the owner or person entitled to the fishing rights, is dealt with by the Larceny Act, 1861. (Sec. 24).

Under this Act, anyone unlawfully angling in the day time (*i.e.*, between the beginning of the first hour before sunrise, and the expiration of the first hour after sunset) in private waters, is liable to a penalty of not exceeding £5, or not exceeding £2, according as the water in which he angles is in land adjoining or belonging to a dwelling-house, or in other land, and in either case, whether any fish is caught or not. If, however, the tackle is taken possession of, as subsequently mentioned, no penalty can be imposed.

Unlawfully taking or attempting to take fish by angling *at night*, or by other means than angling either by day or night, is in the case of water in land adjoining and belonging to a dwelling-house, a misdemeanour triable at quarter sessions; whilst the same offence committed in other private water is punishable on summary conviction by fine not exceeding £5, and forfeiture of any fish actually taken.

According to an old case decided under other provisions of the criminal law, land is not to be considered as "adjoining" a dwelling-house if there is anything in the nature of a fence between it and the house (Rex v. Hodges, 1829).

Taking fish by means of a set line is not angling, and any person found so offending in the day time must not be prosecuted for angling, but for taking or attempting to take fish, otherwise than by angling. And it follows that he cannot escape conviction by having his line seized (Barnard v. Roberts, 1907).

As to this right of seizure, the Act empowers the owner of the ground, water or fishery, where any person shall be actually found fishing as before mentioned, his servant

or any person authorized by him to demand from the offender any rod, line, hook, net or other implement for taking or destroying fish, which shall be found in his possession, and in case of refusal to deliver them up to take them by force; if the offender is merely angling in the daytime, the delivery of his tackle exempts him from further penalty (Sec. 25).

The authority to seize is, it will be observed, only given to an *owner*, his servant, or person authorized by him. There is no definition of owner in this Act, and it has been suggested that an occupier entitled to the fishing has no power of seizure. Apparently the point has never been judicially decided, and the case of Swanwick v. Varney above quoted is no authority under this Act. According to our view the person in whom the land and water or fishery is legally vested, whether as tenant or not, might properly be held to be an owner for the purpose of seizing tackle.

On the principle decided with regard to the gamekeepers of Lords of Manors seizing dogs referred to in a previous chapter, when tackle is lawfully seized it becomes the property of the person seizing, or his master, or the person authorizing him, as the case may be, and may, if desired, be at once destroyed. The owner of the fishing or other person authorized might with impunity, it is conceived, break the trespassing angler's rod if he was unable to wrest it from him.

It should be noted that the angler must be on the land or water when the tackle is seized, otherwise the seizure will be unlawful.

The remarks made in a previous chapter as to a claim of right set up to oust the jurisdiction of the Court apply

equally to the offences of unlawful angling. The defendant cannot escape conviction by proving a *bonâ fide* belief that he had the right to fish in the water in question, if such right as he sets up could not exist in law (see Hudson v. Macrea, 1864, and the later cases quoted in chapter 15).

Proceedings for penalties under the Fisheries Acts or under bye-laws made thereunder must be commenced within six calendar months of the commission of the offence, and the same applies to the offences dealt with summarily under the Larceny Act (Sec. 62 of Act of 1873, and Sec. 11 of Summary Jurisdiction Act, 1848).

Districts created by Provisional Order.

The Salmon and Fresh-water Fisheries Act, 1907, authorizes the Board of Agriculture and Fisheries, with a view to the improvement and development of salmon fisheries or fresh-water fisheries or either of them by provisional order, after a local enquiry, to create a fishery district (which may comprise the whole or part of an existing district), constitute a Board of Conservators; apply all or part of the provisions of the Salmon and Fresh-water Fisheries Acts, and authorize amongst other things the imposition of assessments on private fisheries within the district or the owners and occupiers thereof.

Such an order, like any other provisional order, has to be confirmed by Parliament.

The first two Orders and Acts confirming the same were those of the Usk Provisional Order Confirmation Act, 1908, and the Wye Provisional Order Confirmation Act, 1908, respectively, and it is interesting to see the line at present adopted by the Board of Agriculture and

Fisheries in making such provisional orders. Both are in the same form with a few variations. The only important provisions of the Salmon and Fresh-water Fisheries Acts which are excluded from application in each district are those relating to the constitution and appointment of the Board of Conservators. Instead of these the Order in each case provides for a Board of Conservators, constituted of a specified number of members, appointed by each County Council, who retain office till death or resignation, or till their appointment is determined by their Council, a specified number elected by owners of private fisheries assessed under the Order, and in lieu of the old ex officio member, any person assessed under the Order for a private fishery or fisheries of a total yearly value of £150 in case of the Usk, and £200 in case of the Wye district, is entitled to be an additional member, who may, if he desires, act by attorney. Persons jointly entitled may appoint one of themselves or any other attorney; and an infant or lunatic may act by his guardian or committee.

The most important innovations are those authorizing the rating of owners of private fisheries.

All private salmon or trout fisheries in the district (in case of the Wye district only those of the yearly value of £5 or upwards) are to be assessed by an Assessment Committee of the Board of Conservators, by agreement with each owner, or failing agreement by a valuer appointed by the Board of Agriculture and Fisheries, whose remuneration is to be paid in equal proportions by the Board of Conservators and the owner. Rates may be levied on the owners in accordance with their assessments for the maintenance and improvement of

the fisheries, but in the Wye Order is an express provision that, as far as possible, levies on trout fisheries, after paying their share of general expenses, shall be appropriated to the improvement of trout fisheries.

With regard to "other fresh-water fish" the conservators are given the unique powers of being entitled to issue licences for fishing for them or any species of them, which must not exceed the scale of trout licences, and a licence for salmon, trout, or char will cover other fresh-water fish. The conservators have also power to alter the close time for other fresh-water fish and to prohibit the taking of undersized fish. The owner or occupier of any fishery who considers he is injuriously affected by any bye-laws may apply to the Board of Agriculture and Fisheries to assess compensation to be paid to him by the conservators.

The conservators are further authorized to grant permits for the use, without payment of licence duty, of any instrument for taking fish for stocking, breeding, or scientific purposes.

There is a somewhat arbitrary power vested in the Board of Agriculture under each Order, viz., as to any specified kind of fish, the power of requiring every person taking such fish within the district to make a full and true return of the same on a form to be supplied by the Board of Agriculture and Fisheries, under a penalty not exceeding £5 in case of non-compliance.

Special Close Times and Licence Duties in different districts.

Limits of space prevent us discussing the various bye-laws of the different districts except as far as they

relate to close times. As to other matters, the fisherman may, in general, rest assured that if he is fishing in an ordinary, sportsmanlike way, with no other tackle than a rod and line and the usual recognised bait, landing net of ordinary dimensions, and gaff when required, he need have little fear that he is infringing the bye-laws.

It will be remembered that the statutory times are in force in all districts, except those governed by special Acts or except where altered by bye-laws; and that with regard to other fresh-water fish—although there is no power to alter these, except under authority of a special Act, as in the case of the Usk and Wye Acts—a district or part of a district may be exempted altogether from such close time.

The conservators of the following fishery districts have taken advantage of this last-mentioned power and exempted their districts or parts of districts, so that there is now no close time for such other fresh-water fish.

Devonshire Avon.

That part of the Hampshire Rivers district which comprised the original Avon and Stour district.

Axe.

Eden.

Towy.

In Kent, for pike only, there is no close time.

In the Severn district there is no close time for pike, and except in the Severn river itself below the mouth of the Verniew, and except such part of the Avon as is in the counties of Worcester and Gloucester, there is no close time for any "other fresh-water fish"

except grayling. The excepted portions would appear to comprise all the public waters, and as to private waters, the close time for other fresh-water fish is practically not applicable except against trespassers.

The Conservators of the Thames (including the Isis) and those of the Lee and Medway under their Special Acts have adopted the statutory period of 15th March to 15th June for other fresh-water fish; in the Thames above London Bridge no rod and line fishing is allowed between these dates except for taking trout with an artificial fly, or spinning or live bait. The Mersey above Runcorn Bridge is not in a fishery district, nor are there any fishing bye-laws made by the Conservancy Board.

In the Norfolk and Suffolk districts, which includes all the "Broads," there is under the special Act no close time for other fresh-water fish.

We conclude with a table giving the names of the several English fishery districts, the limits of sea coast comprised in each; the special close times for rod and line fishing for salmon, trout and char; the special periods during the open season when a gaff may be used for salmon, and the cost of rod licences for salmon and trout and char respectively.

It must be understood that where no date is entered under close times the statutory periods of 2nd November to 1st February for salmon, and 2nd October to 1st February for trout and char are in force, and that where no time limit is given under the gaff heading, it is lawful to use it as auxiliary to a rod and line during the whole season. All dates are inclusive. Also it might be again noted that the duty is for a single rod and line.

The description of the exact area of each district would fill many pages, but generally it includes the river or rivers (if any) giving the title to the district and its or their tributaries and all other streams running into the sea between the points named, but it does not necessarily extend right to the source of such rivers and streams, being often limited to such as is in a particular county or counties, or below certain specified points. In case of doubt information can be obtained from the clerk to the conservators of the particular district.

	Name of District in Order of Coast and Limit of Coast Area.	Close Time for Salmon.	Period when lawful to use Gaff for Salmon.	Close Time for Trout.
1	**Eden**—Sark Foot to Seaton ...	2 Nov.–1 Feb.	1 July—15 Nov.	2 Oct.—last Feb.
2	**Derwent**—Seaton to St. Bee's Head.	15 Nov.–10Mar.	1 July—14 Nov.	15 Sep.—10 Mar.
3	**West Cumberland**—St. Bee's Head to Haverigg Point.	14 Nov.–10 Mar.	1 July—13 Nov.	2 Sep.—10 Mar.
4	**Kent, &c.**—Haverigg Point to Warton.	1 Nov.—31 Mar.	2 June—31 Oct.	Duddon and tributaries above Foxhill Viaduct, 2 Oct.—1 Apl. Bela and tributaries, 16 Sep.—15 Feb. Rest of District, 2 Oct.—3 Mar.
5	**Lune**—Warton to Blackpool ...	2 Nov.—1 Mar. In Lune and tributaries above Aqueduct Bridge, Lancaster. 12 Aug.–15 July	—	2 Oct.—1 Mar.
6	**Ribble**—Blackpool to Formby Point.	2 Nov.—1 Mar.	1 May—1 Nov.	2 Oct.—1 Mar.
7	**Dee**—New Brighton to near Meliden Church.	2 Nov..-31 Mar.	—	14 Oct.—14 Feb.
8	**Elwy and Clwyd**—Meliden Church to Rhos Bay.	15 Nov.–15 May	—	2 Oct—28 Feb.
9	**Conway**—Rhos Bay to R Aber	1 Nov.–30 April	1 May—31 Oct.	1 Oct—last day Feb.

Close Time for Char.	Rod Licence Duties.								
	Salmon.				Trout and Char.				
	Season.	Month.	Week.	Day.	Season.	Month.	Week.	Day.	
—	30/- Below 21/- Above 21/- In rivers and 7/6 Single handed rods in Duke 5/-	5/- Botcher by Bridge, — Armathwaite. — Waver, Wampool — — — —	— — — —	2/6 — — —	4/- — — —	— — — —	1/6 — — —	— — — —	1
In Crummock and Buttermere, 1 Nov. —30 June. Rest of District 15 Sep.—10 Mar.	30/- Before 15th Sept., 15/- Above Lake, 10/- Before 14th Sept., 7/6	— After 14th Sept., 15/- foot of — After 14th Sept., 7/6	— — Bassenthwaite — —	— — — —	10/- Above ermouth— 5/- Below ermouth (licence before 1st July), 5/-	— Derwent Bridge, — Derwent Bridge, —	— 2/6 — 2/6	— — Cockermouth required —	2
2 Sep.—10 Mar.	10/6	—	5/-	2/-	2/6	—	1/-	—	3
As for trout ...	Whole District, 10/- Excluding Lake Week-end Tickets —	— — —	5/- Windermere, — —	— — —	5/- 2/6 —	— — —	— — 2/6	— — —	4
—	20/- (Lune, 10/- (Wyre) 5/- (Keer) 5/-	— above Kirkby Bridge), — — —	— — — —	— Lonsdale — — —	2/6 — — —	— — — —	— — — —	— — — —	5
2 Oct.—1 Mar.	20/-	10/-	—	—	5/-	—	2/6	1/-	6
—	20/-	—	10/-	5/-	—	—	—	—	7
2 Oct.—28 Feb.	20/-	—	—	—	4/6	—	2/-	—	8
—	20/-	10/-	3/-	1/-	2/-	—	—	-/6	9

Name of District in Order of Coast and Limit of Coast Area.	Close Time for Salmon.	Period when lawful to use Gaff for Salmon.	Close Time for Trout.
10 **Selont**—Garth Point to Llanaelhairn Point, and to Twyn y Parc Point in Anglesey.	1 Nov.—1 Mar.	2 Mar.—1 Nov.	In County Carnarvon, 15 Feb.—1 Mar. Rest of District, 15 Sep.—13 Feb.
11 **Dwyfach**—LlanaelhaiarnPoint to Criccieth.	15 Nov.–1 Mar.	—	—
12 **Dovey**—Criccieth to Cymvelin	1 Nov.–30 April	31 May—20 Oct.	—
13 **Ayron**—Carreg Tipog to New Quay Head.	15 Nov.–14 Feb.	—	1 Oct.—15 Mar.
14 **Telfy**—New Quay Head to Dinas Head.	1 Nov.—28 Feb.	—	1 Oct.—28 Feb.
15 **Cleddy**—Dinas Head to St. Govens Head.	1 Nov.–1 Feb.	—	29 Sept.—1 Mar.
16 **Towy**—St. Govens Head to Worms Head.	15 Oct.–1 April	2 Apr.–30 Sept.	In Towy between Great Western Railway Bridge below Carmarthen and confluence with Gwili, 2 Oct.—30 June. Rest of district, 2 Oct.—1 Mar.
17 **Ogmore**—Porthcawl to Cold Knap.	15 Nov.–30 Apr.	—	30 Sept.—last Feb.
18 **Taff and Ely**—Cold Knap to Bute Dock.	15 Nov.–30 Apr.	1 June—1 Nov.	20 Sept.—1 Feb.
19 **Rymney**—Bute Dock to Ty ton y Pill.	2 Nov.—1 April	1 May—1 Nov.	2 Oct.—1 Mar.
20 **Usk**—Ty ton y Pill to Collister Pill.	2 Nov.—1 Mar.	1 May—1 Oct.	2 Sept.—14 Feb.
21 **Wye**—Collister Pill to Cone Pill.	16 Oct.—1 Feb.	2 April—1 Oct.	2 Oct.—14 Feb.
22 **Severn**—Cone Pill to Avon Battery.	2 Oct.—1 Feb.	—	2 Oct.—1 Mar.

Close Time for Char.	Rod Licence Duties.								
	Salmon.				Trout and Char.				
	Season.	Month.	Week.	Day.	Season.	Month.	Week.	Day.	
22 Oct.—1 Mar.	15/-	10/6	5/-	2/6	5/-	2/6	—	1/-	10
—	21/-	10/-	5/-	1/-	7/-	5/-	2/-	—	11
—	20/-	10/-	5/-	1/-	1/-	—	—	—	12
—	10/-	— Fortnight, 5/-	—	—	2/6	1/-	—	—	13
—	20/-	10/6	—	—	2/6	—	—	—	14
—	10/6	—	—	—	3/6	2/6	1/-	—	15
As for Trout.	21/-	—	—	—	2/6	—	—	—	16
—	10/6	—	—	—	2/-	—	—	—	17
—	—	—	—	—	2/6	—	—	—	18
—	—	—	—	—	1/-	—	—	—	19
2 Sept.—14 Feb.	30/-	— Fortnight, 10/-	—	—	2/6	—	—	—	20
—	30/- In the Bridge, or in the 15/-	Fortnight, 10/- Wye above Llanwrthwl any tributary of Wye above Builth Bridge,	—	—	2/6 —	1/- —	— —	— —	21
—	10/-	—	—	—	In Salop, Montgomery and Denbigh, 2/- Remainder of District, 1/-	— —	— —	— —	22

	Name of District in Order of Coast and Limit of Coast Area.	Close Time for Salmon.	Period when lawful to use Gaff for Salmon.	Close Time for Trout.
23	**Avon Brue and Parret**—Avon Battery to County Boundary.	—	—	—
24	**Taw and Torridge**—North Coast of Devon.	1 Nov.–31 Mar.	1 June—31 Oct.	1 Oct.–last day Feb.
25	**Camel**—West Boundary of Devon to Peel Point.	1 Dec.–30 April	—	1 Oct.—15 Mar.
26	**Fowey**—Peel Point to Rame Head.	Below Lostwithiel Bridge and St. Winnow Point, 1 Dec.–30 Apr. Rest of District, 1 Dec.–4 Apr.	—	Between Lostwithiel Bridge and a line drawn from north end of Penquite Wood to St. Winnow Point, 1 Oct.—30 Apr. Rest of District, 1 Oct.—15 Mar.
27	**Tamar and Plym**—Rame Head to Stoke Point	2 Nov.—1 Mar.	—	2 Oct.—1 Mar.
28	**Avon** (Devon)—Stoke Point to Start Point.	In the Erme, 30 Nov.–4 Apr. Rest of District, 30 Nov.–1 May	Not before 1 April.	1 Oct.–last day Feb.
29	**Dart**—Start Point to Hope Ness.	1 Oct.—last day Feb.	1 Apr.—30 Sep.	1 Oct.–last day Feb.
30	**Teign**—Hope Ness to Clerk Rock.	—	1 May—1 Sep.	1 Oct.—2 Nov.
31	**Exe**—Clerk Rock to Ottermouth.	20 Oct.–1 Mar.	15 Mar.–30 Sep.	15 Sep.—last day Feb.
32	**Otter**—Ottermouth to Beer Head.	—	—	—
33	**Axe**—Beer Head to Portland Bill.	20 Nov.–30 Apr.	—	15 Sept.—last day Feb.
34	**Frome**—Portland Bill to Hampshire Boundary.	—	—	—
35	**Hampshire Rivers**—East Boundary of Dorset to Stokes Pier, Southampton and Ryde.	Westward of line drawn N. and S. through the Needles, 2 Oct.–1 Feb. Rest of District, 16 Oct.—1 Feb.	—	Trout in Avon and tributaries above Bickton Mill, 15 Oct.—15 Apr.

Close Time for Char.	Rod Licence Duties.								
	Salmon.				Trout and Char.				
	Season.	Month.	Week.	Day.	Season.	Month.	Week.	Day.	
—	15/-	—	—	—	In Rivers. 2/6 In Remainder 5/-	er Avon 1/- 2/6	and its — —	tributaries. 6d. 1/-	23
—	24/-	—	—	—	5/-	—	1/-	—	24
1 Oct.—15 Mar.	12/-	Fortnight, 5/-		1/-	4/-	Fortnight, 2/6		1/-	25
As for Trout.	15/-	5/-	—	—	5/-	—	—	—	26
2 Oct.—1 Mar.	10/-	—	—	—	2/6	—	—	1/-	27
—	20/-	—	—	—	10/-	—	5/-	2/-	28
—	20/-	—	7/6	2/6	10/-	5/-	—	2/-	29
—	20/-	—	—	2/-	5/-	—	—	—	30
—	30/-	—	7/6	—	5/-	—	2/6	1/-	31
—	—	—	—	—	—	—	—	—	32
—	10/-	—	—	—	2/6	—	—	—	33
—	20/-	—	—	—	—	—	—	—	34
—	30/-	20/-	—	—	5/-	— Above 2/6	2/6 Bickton 1/-	1/- Mill, —	35

	Name of District in Order of Coast and Limit of Coast Area.	Close Time for Salmon.	Period when lawful to use Gaff for Salmon.	Close Time for Trout.
36	**Adur**—West Tarring to Portobello.	1 Oct.—2 Feb.	—	1 Oct.—31 Mar.
37	**Ouse (Sussex)**—Portobello to Seaford Head.	1 Nov.–1 April	—	—
38	**Cuckmere**—Sleaford Head to Fairlight.	—	—	1 Oct.—31 Mar.
39	**Rother**—Fairlight to Dungeness.	—	—	1 Oct.—31 Mar.
40	**Stour (Kent)**—North to South Foreland.	2 Nov.—1 May	—	—
41	**Suffolk and Essex**—Dovercourt Lighthouse to Covehithe Coastguard Station.	—	—	2 Oct.—10 April
42	**Norfolk and Suffolk**—Covehithe Coastguard Station to West Boundary, Norfolk.	—	—	—
43	**Ouse and Nene**—West Boundary of Norfolk to Lapwater Hall.	—	—	2 Oct.—31 Mar.
44	**Welland**—Lapwater Hall to Western Point.	—	—	—
45	**Witham**—Western Point to Gibraltar.	—	—	—
46	**Trent**—Ingoldmells Point to Trent Falls.	—	—	—
47	**Yorkshire**—Trent Falls to Hayburn Wyke.	16 Nov.–last day Feb.	1 May—1 Nov.	2 Oct.—15 Mar.
48	**Esk (Yorks.)**—Hayburn Wyke to Skinningrove Beck.	—	—	1 Oct.—15 Mar.
49	**Tees**—Skinningrove Beck to Hardwick Hall.	—	—	1 Oct.—15 Mar.
50	**Wear**—Hardwick Hall to Souter Point.	In Wear and tributaries above South Biddick or Biddick Ford 2 Nov.–1 Mar.	—	2 Oct.—15 Mar.

Close Time for Char.	Rod Licence Duties.								
	Salmon.				Trout and Char				
	Season.	Month.	Week.	Day.	Season.	Month.	Week.	Day.	
1 Oct.—31 Mar.	—	—	—	—	1/-	—	—	—	36
—	—	—	—	—	—	—	—	—	37
1 Oct.—31 Mar.	—	—	—	—	1/-	—	—	—	38
1 Oct.—31 Mar.	—	—	—	—	1/-	—	—	—	39
—	—	—	—	—	—	—	—	—	40
—	—	—	—	—	—	—	—	—	41
—	—	—	—	—	—	—	—	—	42
—	—	—	—	—	—	—	—	—	43
—	—	—	—	—	—	—	—	—	44
—	—	—	—	—	2/6	—	—	—	45
—	—	—	—	—	2/6	—	1/-	—	46
2 Oct.–15 Mar.	20/-	—	—	—	1/-	—	—	—	47
—	10/-	—	—	—	1/6	—	—	—	48
—	20/-	—	—	—	2/6	—	—	—	49
2 Oct.—1 Mar.	5/-	—	—	—	2/-	—	—	—	50

Name of District in Order of Coast and Limit of Coast Area.	Close Time for Salmon.	Period when lawful to use Gaff for Salmon.	Close Time for Trout.
51 Tyne—Souter Point to Newbiggen Point.	—	—	1 Oct.—21 Mar.
52 Coquet—Newbiggen Point to Hawick Burn.	1 Nov.—31 Jan.	1 May—30 Sep.	1 Nov.—3 Mar.
The following are not Fishery Districts—			
Thames (to Yantlet Creek) ...	1 Sep.—31 Mar.	Only permitted for Pike.	11 Sep.—31 Mar.
Lea	11 Sep.—31 Mar.	Only permitted for Pike.	11 Sep.—31 Mar.
Medway	—	—	—
Severn (see No. 22)	—	—	—

Close Time for Char.	Rod Licence Duties.								
	Salmon.				Trout and Char.				
	Season.	Month.	Week.	Day.	Season.	Month.	Week.	Day.	
1 Oct.—21 Mar.	20/- In River Bridge,	Whole —	District, 10/- above	5/- Old	2/6	1/-	—	—	51
	5/- In South Tyne Dam,	—	2/6 above	1/- Warden	—	—	—	—	
	5/- In Rede above two	— Water e the junction rivers,	2/6 and North Tyne, of the said	1/-	—	—	—	—	
	10/-	—	5/-	2/6	—	—	—	—	
—	5/-	—	—	—	2/6	—	—	—	52
11 Sep.—31 Mar. (also above London Bridge 15 Mar.—15 June)	5/-	—	—	—	2/6	—	—	—	
15 Mar.—15 June (all other fish than Salmon, Salmon Trout and Trout)	—	—	—	—	—	—	—	—	
—	—	—	—	—	—	—	—	—	
—			None above Runcorn Bridge.						

APPENDIX.

PURITY OF SPORT

The watch-word of all the Game Protection Societies, and they are many, the Game Farmers' Associations, the Game Food Traders' Association and the Game Keepers' Associations, is, and should be, Purity of Sport.

Since this book first appeared in serial form, 1897-8, its field of readers has so increased and multiplied that the author feels his efforts can hardly be considered complete, unless mention is made of the work of these societies, from whom he has received so much assistance, support and encouragement.

The "Jockey Club" of the Shooting World is undoubtedly the *Field Sports and Game Guild*, founded in 1884, to protect and encourage the Sports of Hunting, Coursing, Shooting and Fishing. After nearly a quarter of a century's good works, that Society is to-day in a better organised and stronger position than it has previously enjoyed. Its committee comprises some of the best names in the United Kingdom, and the Society has affiliated to it every Game Protection Society in England. Amongst the most active of these affiliated Societies may be enumerated the East Anglian Game Protection Society; the Essex Poaching Prevention Society; the Hampshire Game Protection Society; the Bedfordshire Game Protection Society; the Huntingdonshire Game Protection Society; and others *in esse* and *in embryo*.

Each affiliated Society nominates Delegate Representative Members on the Committee or Council of the Field Sports and Game Guild with full powers. There are guaranteed funds to protect and indemnify the Committee, amounting to large totals, whilst enquiry agents, watchers and private

detectives are employed wherever it is thought their attendance is most necessary.

It may surprise some to learn that during an average year there are recorded about 10,000 convictions in the United Kingdom for offences arising from game preservation.

The offences which give these societies the greatest anxiety of all are those in connection with game egg-stealing, and the extent to which this traffic has been carried on seems incredible.

From about the 20th of April to the end of May it has not been uncommon for many Receivers, in a game county like Norfolk or Suffolk, to send away an average of from one to three thousand game eggs *daily*. The eggs being then worth one shilling each, the value of the stolen property can easily be calculated.

So easy were the eggs to obtain and so profitable was the business, that the number of receivers multiplied, until the Game Preservation Societies made a determined effort to stamp out the evil at all costs. Several of the worst offenders were watched, caught, prosecuted and fined heavy amounts. But the business was continued, although conducted more carefully, more silently and more guardedly. Appeals were made to game-egg purchasers to assist, and the game farmers were taken in hand, encouraged and recommended.

Such game farmers as agreed to permit their farms to be inspected, to give full particulars of any eggs purchased and the number sold, not to buy except from land owners or occupiers having complete sporting rights, etc., are granted annual "Associateship" of the Game Guild, which is accepted as a hall mark of integrity.

It is therefore the plain duty of every purchaser of game eggs to assist these societies in their good works by absolutely refusing to allow any orders to be given for game eggs, except to an associate of the Game Guild, or before confidential enquiries have been made concerning the proposed source of purchase from the Secretary of the Game Guild.

The average number of hen pheasants an ordinary game farmer keeps may be taken at from two to three thousand. The average number of "Associates" of the Game Guild, or game farmers recommendable, is about ·30. These farms produce over 2,500,000 game eggs annually, which are guaranteed in writing.

The moralism is obvious.

The danger in purchasing without precaution can be realised upon short consideration. How easy it is for anyone to insert a glowing advertisement in the sporting newspapers of game eggs for sale, quoting a price some twenty-five per cent. below the current market average. Editors, unfortunately, are too loth to refuse to accept them, even when the Societies can produce absolute proof that the advertisers are notorious receivers from doubtful sources. If these advertisements are refused, how easy it is to circularise possible buyers or dealers outside the pale of "Associateship."

How easy it is to cloak the sources of supply by penning a few birds as a blind, and by omitting to keep books or any record of the eggs dealt in. Many instances are known where thousands upon thousands of pheasant eggs have been sold by men who could not have gathered even two per cent. thereof from the bedraggled specimens of *Phasianus colchicus* which lived their miserable, insanitary existence in the back yards of these so-called respectable Game farmers.

Had game eggs been included in the Game Acts, or made subject to a dealer's licence, as they should have been, because a fertile egg is as much a pheasant as the bird itself—at least, according to logic—much difficulty would have been obviated and many tens of thousands of pounds diverted from lawyers' pockets; but it is ridiculous, although nevertheless law, that a wild pheasant's egg picked up in the open is not the subject of larceny, and, like a ferret, cannot be stolen.

For many years the Game Protection Societies have fought an up-hill fight in connection with this defect to our Statute Books, and in 1907, they expended some thousands of pounds in a prosecution which has had the distinguished honour of being made the leading case in law on this subject.

From "The Eastern Daily Express."

THE GREAT EGG CASE.

THE APPEAL TO THE COURT OF CROWN CASES RESERVED.

LONDON, Saturday, January 11th, 1908.

There was a very large attendance in the Court of the Lord Chief Justice at the Law Courts this morning, when the case was granted by Sir William Grantham at the instance of the two defendants in the case of Rex *v.* Herbert Wyndham Stride, until recently head gamekeeper to Sir Walter Gilbey, at Elsenham, and Frederick William Millard, sporting journalist, who were convicted at Chelmsford Assizes of stealing and receiving respectively a large quantity of pheasants' eggs, the property of Sir Walter Gilbey, and each sentenced to twelve months' hard labour, came before the Lord Chief Justice and Mr. Justices Lawrance, Ridley, Darling, and Channell, who sat as the Court for the consideration of Crown Cases Reserved. Mr. Rawlinson, K.C., M.P., with Mr. Ernest E. Wild and Mr. Claughton Scott (instructed by Mr. Nicholas Everitt, of the firm of Messrs. Watson & Everitt, Norwich and Lowestoft) were for the Crown, Mr. Marshall Hall, K.C., Mr. Danckwerts, K.C., with Mr. J. P. Valetta, appeared for Stride; Mr. Horace Avory, K.C., with Mr. R. D. Muir and Mr. Graham Campbell, appeared for Millard; Mr. G. Elliot held a watching brief.

Mr. Horace Avory, K.C., said, at the personal request of his friend who appeared for Stride, he (Mr. Avory) was appealing first, although Millard stood second on the indictment. The two defendants were tried and convicted before Mr. Justice Grantham in December on an indictment which charged Stride with stealing 1,000 pheasants' eggs, the property of Sir Walter Gilbey, and Millard with receiving, knowing them to have been stolen. Before he read the case

the Court would like to know the questions. The first was whether there was any evidence to go to the jury of any pheasants' eggs having been stolen at all. Secondly, whether there was any evidence of any of the pheasants' eggs which were alleged to have been stolen being the property of Sir Walter Gilbey; any evidence of the ownership in fact. Thirdly, whether the indictment was not bad, because it did not, on the face of it, describe the property as anything which was subject to feræ naturæ. And, fourthly, and this was a point which only affected Millard, whether the count for receiving was not bad on the ground that it did not describe the felony within the meaning of Section 91 of the Statute 24 and 25 Vic., was the count for receiving bad on the face of it quite apart from the point of the pheasants' eggs. Mr. Avory then proceeded to read the case granted by Mr. Justice Grantham, as follows:—

"The defendants were tried before me at the Essex Assizes, holden at Chelmsford upon the 5th, 6th, and 7th of December, 1907, upon an indictment which he now set out. At the close of the case for the prosecution it was submitted by counsel on behalf of both defendants that there was no evidence proper to be left to the jury that the 1,000 pheasants' eggs, which formed the subject of the indictment, had been stolen, or that they were the property of Sir Walter Gilbey, as alleged in the indictment. I declined to stop the case, and ruled that there was evidence to go to the jury in support of the indictment as against both defendants. Both the defendants were called and gave evidence on their own behalf. The reasons for my judgment formed on the evidence given in the case were shortly these:—Sir Walter Gilbey had a shooting estate at Elsenham of about 8,000 acres, and the principle adopted by him of providing that estate with tame bred birds was this. There was a head keeper, the defendant Stride, and eight under-keepers. The defendant Stride had for some years up to 1900 lived at the head keeper's cottage on the estate, but he then hired a farm on an adjoining estate, three miles away, with the consent of Sir Walter Gilbey, and drove to and from his farm to Sir Walter's in a horse and cart, the property of Sir Walter, to attend to his duties as keeper. Instead of having tame pheasants or pheasants in captivity, and taking the eggs day by day from them during the laying season, as is usually done, many hundreds, not to say thousands, of hen pheasants were always left in and fed in the woods, and then, directly the laying season began, the

under-keepers went regularly through the woods and picked up the eggs thus laid, and putting them in buckets or baskets, took them to the hatching pens at the head keeper's rearing place, and left them there in a place of safety till Stride wanted them to put under the hens (domestic fowls) that he had provided (at Sir Walter Gilbey's expense). Sometimes these eggs remained a day or two before being put under a hen because it was desirable to get a large number of hens on the same day, so that if necessary unfertile eggs could be taken away from the nests, and eggs from other nests substituted for them—*i.e.*, assuming 1,900 eggs were put in one day under 100 hens, 19 to each hen—two of the eggs as a rule would be found to be unfertile in two days' time, and therefore, all the eggs, say 200, would be taken from the nests of about 12 hens and distributed amongst the 88 remaining hens, so that each hen would still sit on 19 eggs and bring off her full complement of 19 chickens."

"In this way the defendant Stride, on Sir Walter's behalf, had full control of the eggs thus collected, for the whole period of the laying season, and dealt with all as desired by Sir Walter, some of them being used in the house at Elveden Hall, and others sent away as directed as presents to shooting friends, Stride giving the estate agent an account of all eggs thus used or given away. Under these circumstances, I held the eggs had been reduced into possession, and could not be classed under the term feræ naturæ, a term applied generally to living and animate, and not to inanimate objects. Next, as to the 1,000 eggs sold by Stride being the property of Sir Walter Gilbey, it was admitted that these eggs were sold by Stride to the defendant Millard. Prima facie, eggs that a head keeper is dealing with are the property of his master, in the same way that the corn a carter is dealing with is the property of his master, but that assumption can be rebutted by an explanation of where the eggs, or the corn, came from, and proof given that they belonged to the keeper, or carter, as the case might be. On the sale of the eggs being discovered, Mr. Gilbey, Sir Walter's son, who managed the shooting, asked Stride for an explanation of how he came to be in possession of them. Stride told Mr. Gilbey at once that they were the produce of Stride's own tame hen pheasants, that at his farm he had regular pheasant pens, where they were kept in captivity, and that he regularly dealt in eggs thus obtained. Mr. Gilbey, being satisfied with this explanation, informed the chairman of the Game

Protection Society, which was conducting the prosecution, of Stride's explanation, and it was then arranged that Stride should have an opportunity of giving this explanation to the solicitor of the society in the presence of Mr. Gilbey. At this meeting Stride again detailed his story in its minutest points, telling them he could point out exactly where the pens were on his farm, and how he sold the hen pheasants in the following October to a game dealer in London. As no one had ever heard of Stride keeping these tame birds, the solicitor asked Stride if he would accompany him to his farm, point out the places where the pens were, and bring forward some of his men who could verify his statement. Stride readily agreed to this, and thereupon went down to the farm, and pointed out places where, he said, the pens had been, and called witnesses to verify his statements. After this he asked the solicitor's clerk if he was not satisfied with the truth of his story. The solicitor's clerk answered that if it had not been for the apparently truthful way in which Stride had told the story himself he should have said that the witnesses called were the greatest liars he had ever seen. The solicitor, in fact, came to the conclusion that the whole story was a fabrication, and proceeded to get evidence from policemen and others who knew the place well as to whether it was true or not, and they all declared there never was a pen of pheasants, or an egg laid, upon the place, and the prosecution was therefore proceeded with, and on a policeman calling on Stride with the summons he at once said the story was all a lie, and was mere bluff; and he declined to give any other explanation, though saying he had one; and none was given until he went into the witness box, when he stated that once, some five or six years ago, Mr. Spencer, who held the shooting over the estate of about 2,000 acres, of which Stride's farm formed part, gave him permission one day to pick up some pheasant eggs on the property; but Mr. Spencer was not called, though a keeper of his said he believed his master had allowed Stride to pick up a few eggs, though Stride admitted the permission had never been renewed. However, as it was admitted that Stride had sold 4,800 eggs to other purchasers beyond this 1,000 alleged to have been stolen from Sir Walter, and sold to Millard, it was clear that the shooting of Mr. Spencer could not produce that quantity of surplus eggs, so that I directed the jury that it was a most improbable, if not impossible, story, and that they could not place confidence in him as a witness of truth after his

admitted false story to Mr. Gilbey, and to the solicitor of the prosecution. The jury promptly found him guilty."

"With regard to Millard, who was charged with receiving the eggs, knowing them to be stolen, the evidence was of a different character. Millard was the editor of a newspaper called 'The Gamekeeper,' which was owned by Gilbertson & Page, the well-known game food preparers, who keep a game farm for the sale of eggs near Rye House, in Herts, comparatively near to Elsenham. Millard had been a traveller for them, but was now the editor of their paper, and in their employ at a high salary. That many parcels of eggs had been sent by Stride to him at Rye House Station was admitted, and that Millard had received them, and at once changed the labels and sent them on from the same station to North Wales, to a keeper who had obtained his situation through Stride, and was proved to be completely under his thumb. That he received hundreds of pounds from this keeper's employer during several years for eggs sent in this way was admitted, and that he paid Stride for them. Stride said he only gave him 3d. or 6d. an egg, but he said that he paid Stride the full price, about 9d. an egg, and that he received, less 10 per cent. commission. But I told the jury that as Millard was, according to his own account, acting as an agent for Stride, and selling eggs obtained under circumstances stated above, and receiving large sums on his own account for the eggs so sold, he was acting dishonestly by Gilbertson & Page, his employers, through whom, and to whom, all his egg transactions would naturally go. And as he was dealing surreptitiously with these eggs for years, the jury would be justified in believing that when receiving eggs as he had done he must have known they were stolen, and he was accordingly convicted."

Mr. Avory—There was absolutely no evidence that it was contrary to the terms of his appointment with Gilbertson & Page that Millard should be dealing with eggs. There was no evidence that he was under contract with them not to buy eggs, or to do anything but edit the newspaper. He was employed as an editor. He had been their traveller, and there was nothing in the evidence to justify the learned Judge in telling the jury he had no right to have any eggs except through the sanction of his employers. The learned Judge told the jury Millard was acting dishonestly by Gilbertson & Page because he was dealing with eggs on his own account. Then the case goes on:—

"It was shown that for several years similar transactions were taking place between Stride and Millard, and that in no case was any entry made of it or any payment made by Millard to Stride by cheque, though Millard for the last three years had kept a banking account. The suggested places and time for, and manner of, payment of these sums were all most suspicious."

Mr. Avory—You have the evidence on that.

The Lord Chief Justice—The point was that there was no entry made, and no payment by cheque.

Mr. Avory—That is no reason why there should be. He was not dealing as an egg merchant, and there was no reason why he should keep any account. His arrangement was that he would sell them for Stride, and Stride was to pay him 10 per cent. commission on whatever sum Stride got. He used to hand the money over when he got it, less 10 per cent. Then the case goes on:—

"The grounds on which the defendant's counsel asked me to state a case were that the subject matter of the indictment was not the subject of larceny, as it contained no allegation that the eggs had been reduced into the possession of Sir Walter Gilbey, and they relied on the case of Reg. v. Cox. That case I considered had been overruled by Reg. v. Gallears, and at any rate could not be considered law in these days, when the old-fashioned strict technicalities of law are not tolerated. But as pheasants' eggs are the legitimate subject of sale, are almost invariable the eggs of tame pheasants, and that these eggs had undoubtedly been in the possession of Sir Walter Gilbey, I considered the indictment sufficient, and that the eggs were the property of Sir Walter Gilbey as the indictment and legal, and I accordingly refused to withdraw the case from the jury, and the prisoners were both convicted. The second ground for moving an arrest of judgment was that the second count of indictment was bad, because it did not set out all the necessary ingredients of the statutory offence created by Section 91 of the Larceny Act, 1861. I must admit I did not appreciate the point as being a matter worth arguing. The questions for the opinion of the Court are:—

(1) Whether there was any evidence proper to be left to the jury that the 1000 pheasants' eggs which form the subject of the indictment were stolen, or were the property of Sir Walter Gilbey at the time of the larceny charged in the indictment.

(2) Whether the indictment was bad on the ground that pheasants' eggs are feræ naturæ, and the indictment did not show that the pheasants' eggs which formed the subject of the indictment had ever been reduced into possession.

(3) Whether the second count of the indictment was bad in that it did not set out all the necessary ingredients of the statutory offence vested by Section 91 of the Larceny Act, 1861.

Mr. Avory said he was alleging the negative, and it was extremely difficult for him to deal with the evidence and then say it was not evidence. He had read the evidence, and he would describe it, and Mr. Rawlinson could correct him if he was wrong. Stride was head keeper. They had in the case a description of the way in which pheasants' eggs were dealt with. They were not the eggs of pheasants in captivity, but of pheasants still wild in the woods. They were collected and taken to a place called "The Kennels."

The Lord Chief Justice—You must supplement that by saying they were wild birds fed by Sir Walter's servants.

Mr. Avory—Yes, my lord.

Mr. Marshall Hall, K.C.—No. There was no evidence of any feeding.

The Lord Chief Justice—I have only what is in the case.

Mr. Avory—You will have to look at the evidence, but I doubt whether it would make any difference. Mr. Avory went on to say that these eggs were taken to "The Kennels" and there set under hens. He stopped at this point, to say he should be prepared, for the purposes of this case, to admit that if it was proved that the eggs so collected and taken to "The Kennels," either after they had been set under the hens, or before, had been stolen, that would be a sufficient reduction into possession, and would be a subject for larceny. But the point was: Was there any evidence before the jury that these eggs, which were alleged to be stolen, were eggs which had been so dealt with, and so reduced into possession? There was not a scrap of evidence that the eggs came off Sir Walter Gilbey's estate. But even assuming that there was, there was not a scrap of evidence that they came from "The Kennels," or were eggs which had been collected in the woods.

Mr. Justice Ridley—When do you say there would be reduction into possession?

Mr. Avory said as soon as they were collected in baskets from the woods, that might be sufficient reduction into

possession. But he said there was not a scrap of evidence which was not equally consistent of these eggs, even if they came off Sir Walter Gilbey's estate at all, being taken from the woods and collected for the purpose of breeding. There was, indeed, evidence the other way, going to show that they never were taken from the lot of those which were collected, because one of the under-keepers said on one occasion he, having collected eggs and taken them to "The Kennels," thought that some of them were missing. But on enquiry he found he was mistaken, and that they were already under the hens. That showed that if any eggs had been taken from the place where they had been collected they would have been missed; and there was no evidence that any eggs had ever been missed on the estate, either from "The Kennels" or from the collecting place or on the way to the collecting place. The case was absolutely barren as to any evidence as to where these eggs came from. Was Mr. Justice Grantham right in saying, in directing the jury, that the eggs that a head gamekeeper was found dealing with were, prima facie, the property of his master? He (Mr. Avory) respectfully traversed that proposition, and said there was no prima facie about it at all.

The Lord Chief Justice—If a person is employed to go out and collect eggs and bring them in, and has instructions given to him, and instead of following those instructions he sells the eggs away from his master, do you say he is not guilty of larceny?

Mr. Avory—Sells them? Those eggs? Of course. But it must be "them." It was not Stride's duty to collect eggs at all. There was no evidence that Stride ever did collect them.

Mr Justice Ridley—But the under-keepers did.

Mr. Avory—They were not brought to him.—They were taken to a place to which Stride had access. It really came to this. Assuming that a head keeper has access to pheasants' eggs on the estate where he is employed. Is the fact that he is selling pheasants' eggs any evidence that he is stealing his master's? He submitted it was not. There was no presumption in law that any man is dishonest.

Mr. Justice Ridley—Where else is he to get them from?

Mr. Avory—Surely it is not a proposition in law that any man found dealing with property similar to that in which his master deals is presumed to be stealing his master's property? There is no such presumption.

Mr. Justice Ridley—There is no presumption in law, but would not a jury come to that conclusion ?

Mr. Avory—An assistant in a drapery shop found selling a yard or two of ribbon is not evidence that he is stealing it.

Mr. Justice Channell—If the draper had thousands of yards of it, and could not say he had missed any, would not a jury exercise their common sense ?

Mr. Avory—There is no evidence that any property has been stolen. Assuming that there is no evidence that there is any missing, and no evidence of identification——

Mr. Justice Ridley—You cannot identify pheasants' eggs.

Mr. Avory—You are not entitled to invent a new principle of law because pheasants' eggs cannot be identified.

Mr. Justice Channell—Can any human being doubt that these eggs were Sir Walter Gilbey's—anybody who has got a particle of sense ?

Mr. Avory—With great respect, I am arguing a question of law, and I must decline to express any opinion.

Mr. Justice Channell—A jury would say whether or no a man would be likely to be in possession of it.

Mr. Avory—Supposing a head keeper may be honestly in possession of pheasants' eggs, which are not the property of his master, then there is no case to go to the jury.

Mr. Justice Darling having read Mr. Justice Grantham's dictum about a gamekeeper dealing with his master's eggs, and a carter dealing with his master's corn.

The Lord Chief Justice said the prima facie presumption was one of fact, not of law.

Mr. Avory—Supposing these eggs had been collected by Stride himself, from the woods, with the intention of stealing, they would not be the subject of larceny, because of feræ naturæ. To make a case against Stride there must be evidence before the jury that they were taken by Stride after they had been reduced into possession ; in other words, after they had been collected and taken to "The Kennels." As a point of law, there was no description on the face of this indictment of anything that was a subject of larceny. I submit to you, he went on, as a proposition of law, that the indictment to be good for this purpose must describe the property in such a way as to bring it clearly within the decisions as to what is the subject of larceny. Animals, feræ naturæ, or their produce, are not the subject of larceny.

The Lord Chief Justice—My brother Channell suggests that these were "poached eggs." (Laughter.)

After further discussion on the point as to whether these eggs had been reduced into possession, and on the sufficiency of the indictment.

From "The London Times."

Mr. Avory, on behalf of the defendant Millard, submitted that there was no evidence to go to the jury that any pheasants' eggs at all were stolen; or that the pheasants' eggs alleged to have been stolen were the property of Sir Walter Gilbey. The untrue statements made by Stride were not evidence against Millard that he knew the eggs were stolen. There was nothing to justify the Judge in directing the jury that Millard was acting dishonestly to Gilbertson & Page in dealing with eggs on his own account, as it was no term of his employment that he should not buy eggs in this way. The eggs were the eggs of wild pheasants, and not of pheasants in captivity. It must be admitted that if the eggs were stolen after they had been collected by the underkeepers they would be the subject of larceny, as the collecting of them would be a sufficient reduction into possession. But there was no evidence that the eggs, the subject of the indictment, were eggs so dealt with, nor that they came off Sir Walter Gilbey's estate. If eggs had been taken from the place where they were usually placed after being collected they would have been missed, but there was no evidence of any being missed. There was no presumption in law that if a man dealt in the same articles as his master that therefore he was dealing with his master's property. Millard could not be convicted of receiving the eggs unless there was evidence that the eggs were stolen. If the eggs were collected by Stride himself with intent to steal them, he would not be committing larceny, because he would be taking the produce of animals feræ naturæ, which had not been reduced into possession. As against Millard the evidence was equally consistent with the eggs having been taken from other woods than Sir Walter Gilbey's, or by Stride from Sir Walter Gilbey's woods before they had been reduced into possession, in each of which cases there would be no larceny. In the next place the indictment was bad because it did not describe on the face of it anything which could be the subject of larceny. It only charged that 1000 pheasants' eggs were stolen on a certain day. An indictment must describe property in such a way so that it came within the cases which laid down what could be the subject of

larceny. "It is however certain that larceny cannot be committed of such animals in which there is no property, as of beasts that are feræ naturæ and unreclaimed, such as deer, hares, and conies in a forest chase or warren; fish in an open river or pond; old pigeons out of the house; or wild fowl at their natural liberty; although any person may have an exclusive right ratione loci aut privilegii to take them if he can in those places. But if they are dead, reclaimed, and known to be so, or confined and may serve for food, it is otherwise even at common law. . . . . Nor can larceny be committed of the eggs of these, or of hawks." Later, the passage continued;—"John Rough, being convicted on an indictment for stealing a pheasant, value 40s., of the goods and chattels of H.S., all the Judges . . . after much debate and difference of opinion, agreed that the conviction was bad; for in cases in larceny of animals feræ naturæ, the indictment must show that they were either dead, tame, or confined; otherwise they must be presumed to be in their original state; and that it is not sufficient to add 'of the goods and chattels' of such and one." (2 East P.C., c. xvi., sect. 41), see also 2 Russell on Crimes, 6th ed., 246). "An indictment for stealing chattels which are the subject of larceny only in particular cases or under certain circumstances must show that they fall within the requisite description." Archbold, Criminal Evidence, 23rd ed., 76. In "Reg. v. Cox" (1 C. and K., 494) and indictment for stealing "3 eggs of the value of 2d. of the goods and chattels of S.H." was held insufficient. Chief Justice Tindal said that for aught that appeared on the indictment the eggs might have been adder's eggs or some other species of eggs which could not be the subject of larceny. In "Reg. v. Lonsdale" (4 F. and F., 56) the prisoner was indicted for stealing "ten fowls," objection was taken that the indictment could not be sustained as the word "fowls" was ambiguous, inasmuch as the word might mean wild fowl which were not the subject of larceny. On the other side, it was contended that prima facie it must be taken that the word "fowls" meant domestic fowls, at all events the defect could be amended under Lord Campbell's Act (14 and 15 Vict., c. 100), but Chief Baron Pollock declined to accede to the application. He held that the statute referred merely to formal matters, whereas that was a statement of the subject of the offence, and by the law that subject must be stated to be such as could be the subject of larceny. The prisoner was acquitted, and therefore the

point was not finally settled. In "Reg. v. Galleurs" (1 Den. C.C., 501) which was relied upon by Mr. Justice Grantham as overruling "Reg. v. Cox," the prisoner was convicted on an indictment of stealing "one ham of the value of 10s. of the goods and chattels of T.H.," and the objection was taken that for anything that appeared on the face of the indictment it might have been the ham of an animal feræ naturæ, a wild boar for instance, which had been stolen and the case of "Reg. v. Cox" was relied upon, but Mr. Justice Patteson held that the doctrine respecting the description of animals in an indictment applied only to live animals and not to parts of the carcases of animals when dead, such as a boar's head. It was true that he expressed a doubt whether the ruling in "Reg. v. Cox" was right.

But the point in that case did not come up for decision. An egg was different from a part of a dead animal. In all the cases the eggs of animals feræ naturæ were regarded as in the same position as the animals themselves, and therefore they could not be the subject of larceny any more than the animals feræ naturæ could. In "Reg. v. Roe" (11 Cox, 554) the prisoner was indicted for stealing one "dead partridge," and it was proved that the partridge was wounded, but was picked up by or caught by the prisoner while it was alive, but in a dying state, and Mr. Justice Byles stated that it was necessary to allege in the indictment that the partridge was either dead or, if alive, that it was reclaimed, or in captivity, or reduced into possession. The indictment stated that it was dead, whereas it was found by the Jury that it was alive. The indictment therefore was not proved, and the conviction was quashed. In a case cited in Burn's Justice of the Peace, where a man was indicted for stealing three pheasants restrained of their natural liberty, it was held that that was a way of stating that which was the subject of larceny. Further, the count in the indictment for receiving was bad on the ground that it did not describe a felony within the words of section 91 of the Larceny Act, 1861.

The further hearing of the case was adjourned, and the Lord Chief Justice intimated that the Court would be specially constituted on Tuesday in order to finish the case.

(LONDON, Tuesday, January 14th, 1908.)

Mr. Avory on resuming his argument this morning, referred to "Warry on the Game Laws," p. 1, and "Oke's Game Laws," p. 18, as showing that the eggs of wild birds are not

the subject of larceny. Special statutes had been passed to make eggs the subject of larceny. That showed they could not otherwise be so.

The Lord Chief Justice—How can 1000 eggs be other than a collection of eggs—i.e., eggs reduced into possession? We are not disposed to think that one pheasant would lay 1000 eggs in a nest.

Mr. Avory—It is equally consistent with their having been collected by the thief himself. With regard to the count for receiving, which turned on section 91 of the Larceny Act, 1861, this was a purely statutory offence. By section 91, the stealing must be a felony either at common law or by the Larceny Act, 1861, and accordingly the indictment must allege that the stealing was a felony either at common law or by statute—Archbold's Criminal Pleadings (22nd edition), p. 78. He had made inquiries, and found that at the Criminal Court indictments for receiving were now always so framed.

Mr. Justice Darling—Then if you are right, many thousands of persons have been wrongfully convicted?

Mr. Avory—Yes. The fact that the error has existed for years is no answer to the argument. Again, the indictment alleged the receiving of property which might or might not be the subject of larceny, and was therefore ambiguous. He submitted that, if Stride's statements were excluded, there was no evidence of guilty knowledge in Millard. He knew Stride to be a farmer, aud therefore possibly a person having pheasants' eggs to dispose of.

Mr. Marshall Hall, on behalf of the defendant Stride, contended that there was no evidence against him on the indictment as framed. The property in the eggs might have been laid in some person unknown, but the prosecution elected to lay it in Sir Walter Gilbey, although they could have applied for an amendment. Suppose Stride had been himself receiver of stolen eggs, then the indictment so laying the property must have failed. He contended that the evidence showed that to whomsoever the eggs belonged they did not belong to Sir Walter Gilbey. Seven thousand eggs odd were collected according to the evidence, and some 7,350 had been placed under about 350 hens, 21 under each, so that the whole of them were accounted for. The eggs might have been stolen from Mr. Spencer.

Mr. Justice Channell—What access would Stride have to Mr. Spencer's collection?

Mr. Marshall Hall—They may have been taken from Mr. Spencer's wood. The learned counsel proposed to read the summing up of Mr. Justice Grantham.

The Lord Chief Justice—No point is reserved that the learned Judge misdirected the jury, and I know of no case where, the only point being that there was no evidence, the summing up was allowed to be read.

Mr. Marshall Hall submitted, in conclusion, that the conviction ought to be quashed.

The Lord Chief Justice—Mr. Rawlinson, we only trouble you on the point as to the indictment.

Mr. Rawlinson, for the prosecution, said the only case which pressed him was "Reg. v. Cox" (1 C. and K. 494). This was a case decided on circuit, and had been dissented from in "Reg. v. Galleurs" (1 Den., 501). The allegation that the eggs were the goods and chattels of Sir W. Gilbey involved the statement that they had been reduced into possession. In any case he would submit that pheasants' eggs, even taken from the nest, could be the subject-matter of larceny. They were the property of the owner or occupier of the ground. The young of birds were the subject matter of larceny, because they could not get away—1 "Hale's Pleas of the Crown," p. 511.

The Lord Chief Justice—But Hale, while saying that young hawks may be stolen, says "but not of hawks' eggs."

Mr. Rawlinson—That was because a special statute provided for the punishment of those who took them, as Hale states in the same passage.

Mr. Justice Channell—My whole difficulty lies in the passage in "Rex v. Rough" (2 East's P.C., 607), where it is said it was not sufficient to allege that the pheasants were "of the goods and chattels" of a certain person.

Mr. Rawlinson—That passage, I think, was not part of the judgment.

The Lord Chief Justice—I have referred to Mr. Justice Buller's original manuscript, and I do not think you can say that that passage was obiter dictum.

Mr. Rawlinson—At any rate, the doctrine ought not to extend to inanimate objects. He referred to "Reg. v. Jameson and others" (1896, 2 Q.B., at p. 431) The offence was set out here without real ambiguity. "Rex v Rough" (supra) ought not to be extended, and if brought up for decision to-day would be decided differently.

Mr. Danckwerts, handed up Year Book 43, Ed. III., 24, referred to in Mr. Justice Buller's judgment in "Rex v. Rough" (supra).

Mr. Avory, in reply for Millard—The authority of "Reg. v. Cox" (supra) is said to have been undermined by Chief Baron Pollock in "R. v. Galleurs" (supra). But the same Judge presided in the case of "Reg. v. Lonsdale" (4 F. and F. 56), where, on an objection that "fowls" was ambiguous and that "domestic" ought to have been added, he offered to reserve a case. This was a fortiori case. Fowls and eggs were prima facie the subject of larceny; pheasants' eggs prima facie were not.

Mr. Danckwerts, in reply for Stride.—In "Rex v. Tate" (1 Lewin's C.C., 234), Baron Bolland arrested judgment in a case where the indictment charged a larceny "of five hens." In "Reg. v. Cox" (supra) Chief Justice Tindal ruled that an indictment for stealing three eggs the property of "S. H." was bad. In "R. v. Allan" (4 C. and K., 495), decided the next day, Chief Justice Tindal distinguished "Reg. v. Cox" (supra), which was, therefore, a considered, and not an off-hand, decision. In "R. v. Cook" (2 Stark 184), Mr. Justice Bayley held that an indictment was bad which did not allege that which was essential to constitute the offence. He also referred to "R. v. Martin" (1 Leach, 171). All the books laid down this criterion, that the indictment must show an indictable offence, and that there must be such certainty that the defendant can understand the charge, so that he can plead autrefois convict or acquit if he could do so. In "Rex v. Murray" (1906, 2 Q.B., 385), the Court held that no amendment having been made at the trial, the case must be treated as it was in the Court below. Here the property was laid in Sir W. Gilbey without amendment. He felt very strongly that the defendants had not had justice done them, and he regretted that he could not go into the question of the summing up.

The Lord Chief Justice, in giving judgment, said that this case, in his opinion, raised a question of great interest and importance, and he yielded to no one in the endeavour to adhere to the maxim which Mr. Danckwerts had put to them —that an indictment must contain allegations sufficient to enable both the Court and the person accused to know what the offence was with which he was charged. In this case two people, Stride and Millard, were indicted, the first with stealing and the latter with receiving 1000 pheasants' eggs;

and he would like to dispose of two of the points taken by the defence before dealing with the more difficult question. It was suggested on behalf of Millard that the indictment did not allege that the felony was a felony either at common law or under the Larceny Act, 1861. In his judgment there was no substance in that. All that the section said was that the accused must have received the goods "knowing them to have been feloniously stolen." They were told by Mr. Avory that since an undefined date the practice of pleading that the felony was a felony at common law or by virtue of the Larceny Act, 1861, had been adopted at the Central Criminal Court. That practice had not found its way elsewhere, and was not noticed in the pages of any of the recognized text-books. The gist of the offence was the knowing the goods to have been stolen. It was then said that it was an objection —though he doubted whether the point was raised at the trial—that the learned Judge misdirected the jury by telling them that there was a presumption of law that eggs in the possession of a keeper were the property of his master. But that was not a presumption of law, but of fact. Now those being what he might call the incidental points in the case, he now came to the main objection. It was said that the count in the indictment was bad because it did not say that the pheasants' eggs had been reduced into possession. It was not said that the allegation should have been that the pheasants were tame, because it was admitted that if the keeper had collected the eggs on behalf of his master, and that they were then stolen, they would be the subject-matter of larceny. It was suggested that the indictment ought to have contained some expression to show that the eggs had been reduced into possession—such, for instance, as that they had been collected from the nests. Now what was charged in this indictment, construed in the light of common sense? The charge was that Stride, then being the servant of one Sir Walter Gilbey, stole 1000 pheasants' eggs of "the goods and chattels of and of and belonging to" the said Sir Walter Gilbey. He asked himself. Did that indictment, read fairly, involve the necessity of those eggs having been collected? It seems to him that regard must be had to the facts—first, the words "of and belonging to Sir Walter Gilbey" in addition to the words "of the goods and chattels of"; and, secondly, to the number of the eggs, which was very large. No one reading this indictment could possibly think that it related to the stealing of eggs from the nests which

had never been collected. He himself would have come to the same conclusion as that arrived at by Mr. Justice Grantham had the point been taken before him. It was said that the words "of and belonging to" were mere surplusage, but he did not take that view. He thought that this indictment, as a whole, conformed to the strictest rule which Mr. Danckwerts said they ought to apply. Therefore, apart from authority, he should have no difficulty whatever in coming to the conclusion that the indictment was good. He thought it would be straining the rules of technical pleading to excess to say that the indictment did not tell the defendant what he was charged with. The objection he had dealt with was also the main objection to the indictment for receiving, and it was, therefore, not necessary to deal separately with that. They had been pressed, and rightly pressed, with the authorities, from which he thought they ought not to depart—that is, from the principle illustrated by them. The real authority here was "Rex v. Rough" (supra). There the accused was convicted of stealing a pheasant "of the goods and chattels of H.S." It was clear that there were no additional words of possession in that case. The Judges decided that in the case of animals feræ naturæ the indictment must show that they are the subject-matter of larceny. He agreed that for some purposes the eggs of wild animals must be treated in the same way as the animals themselves. But an egg was not a thing that moved about, and when it got to its place of collection it became a chattel. It did not retain its character of being feræ naturæ after collection. Therefore Rough's case (supra) was not an authority in this case except for the proposition that in dealing with an animal feræ naturæ it must be shown that it has been reduced into possession. It was said that the principle was further recognised in "Reg. v. Cox" (supra). Speaking for himself, he said that if at the present day a person was indicted for stealing eggs simply he should be slow to say that the indictment was bad, because it might be said that that might refer to adders' eggs or other eggs, not the subject-matter of larceny. But when Galleur's case (supra) was looked at it was an illustration of a reasonable and common-sense view of this crime. He had referred to the present indictment as in effect charging the theft of 1,000 pheasants' eggs collected. Galleur's case (supra) was an example of the same doctrine, where the charge was that of stealing a ham, and the point was raised that "ham" was an

insufficient description. Mr. Justice Patteson said, "I don't understand the objection. Supposing it turned out on proof to be the ham of a wild boar, why should the prisoner be at liberty to take it from the prosecutor without becoming criminally liable? The doctrine respecting the description of animals in an indictment applies only to live animals, not to parts of the carcases of animals when dead, such as a boar's head." He must point out that this doctrine did not necessarily apply to the eggs. Nothing he had said was against a good defence of feræ naturæ being raised when the charge was one of stealing the eggs of wild birds out of the nests, whatever offence under the Game Law Acts might thereby be committed. He certainly did not agree with Mr. Rawlinson's contention when he said that there could be larceny of the eggs of wild birds from their nests. The judgment of Baron Bolland in "R. v. Tate" (supra) cited by Mr. Danckwerts, seemed to fall far short of what was decided in the case in East's reports (Rex v. Rough") (supra). Again, in "R. v. Lonsdale" (supra), all that appeared was that the question was raised whether "fowls" was not ambiguous, and that the Judge there expressed a willingness to reserve the point. These authorities fell far short of forcing them to say that this indictment charged a stealing of the eggs from the nests. With regard to the point that there was no evidence to go to the jury, they were certainly of opinion that it failed. The conviction, therefore, must be affirmed.

The other learned Judges gave judgment to the same effect, Mr. Justice Darling saying that he thought that, if the indictment in "Rex v. Rough" (supra) had contained the extra words of ownership present in this indictment, the decision would have been different, and that he did not think they were overruling any case cited which was material to the discussion. The conviction was accordingly confirmed.

INDEX.

ACTION: PAGE.

For damage done by game 84, 337
,, ,, hunting 377
,, trespass 133
Only remedy against farmer who takes birds, not game, when reserved to landlord 56

AGREEMENT: (and *see* "Hire of Sporting Rights and Lease.")

Letting of fishing 397
Letting sporting rights .. .. 2, 329, *et seq.*
Form of.. 331
Not under seal, confers no right of sporting or fishing 2, 330, 397
When rent may be recovered under 330, 397
Provisions of, discussed 333
Seal on, when required 2, 332
Stamp on 332
Verbal, effect of 2, 330

Aiding and assisting in the taking of game 264, 267
When game licence required for 267

ALIBI:

Proving. An amusing case 234

ANGLING (and *see* Fishing):

During close times (and *see* "Close Times") 410
Unlawfully in private waters, penalty for 413
Seizure of tackle used for 414

Armed night poacher (*see* "Night Poaching").

ARREST:

By Police Constable 186, 279
,, ,, under Poaching Prevention Act 186, *et seq.*

ARREST—*contd.* PAGE.

Of night poachers .. .. 183, *et seq.*

„ „ when authorized 184

Of trespasser in pursuit of game in daytime 180

Assault by night poacher.. 168

Assessment of sporting rights (*see* "Rating of Sporting Rights").

Assignment of sporting rights 1

Authority (*see* under "Ground Game," "Hares").

BETTING (and *see* "Wager"):

Frequenting street for purpose of.. 392

Penalty for keeping place for 389

What is a "place" .. .. 390, *et seq.*

Birds (*see* "Wild Birds" and "Game").

BLACK GAME:

Close time for 317

Included in definition of game 2

BOARD OF AGRICULTURE AND FISHERIES:

Forms fishery districts 399, 400

Approves bye-laws in 403, 409

„ scale of licence duties in 403, 405

BOARD OF CONSERVATORS (and *see* "Conservators"):

Additional members elected by persons taking out licences to net salmon 403

Additional members in provisional order districts 417

Ex-officers—members of 401, 402

How constituted 400

Members of, elected by County Council 400

Powers of—

Altering close times for salmon, trout and char .. 404, 408

Appointing water bailiffs 403

Exempting district from close time for other fresh-water fish 404, 419

In districts under provisional order may levy rates on private fisheries 417

Making bye-laws 403

Prescribing time for using gaff 404

To issue licences for salmon, trout and char fishing 403, 405

BOUNDARY FENCES:

Exercising rights of ownership in 14

General advice on 22

BOUNDARY FENCES—*contd.* PAGE.
Neighbour's side of, no right to walk on 13
Presumption as to ownership of 14, 18
May be negatived 14
No right to double in search of game 13
No rule as to width of ditch 14, 18
Shooting over, a common law trespass 133
,, not trespass in pursuit of game 132
Breaking the law at profit 308

BUSTARD:
Close time for 317
Included in definition of game 2
Carrier cannot hold game dealer's licence 283

CATS:
Poisoning 111
Setting traps for 110
When killing justifiable 106
CHAR (*see* salmon, trout and char)
Christmas day, unlawful to kill or attempt to kill game on .. 317

CLAIM OF RIGHT:
Examples of .. .. 205, *et seq.*
Must be honestly believed in by defendant 205, 207
Must be founded on reasonable legal grounds 207
What sufficient to oust jurisdiction of justices 207, 208

CLOSE TIMES:
Black game 317
Bustards 317
Game 317
Attempt to kill game during, no offence 317
Except on Sundays or Christmas days 318
Otherwise with birds not game 305, 318
For salmon, trout and char—
Apply to private as well as public waters 409
Limits of variation allowed 409
List of, in various districts 422
May be varied in different districts 404, 408
When not varied 408

CLOSE TIMES—*contd.* PAGE.

Penalty for fishing during 410
For other freshwater fish 408
Cannot be varied 408, 419
Except in provisional order districts or in districts under special Acts 418
Districts may be exempted from 409, 419
None for angling in private waters with leave of owner.. 409
Penalty for fishing during 411
Grouse 317
Hares (Christmas and Sundays only) 317
Partridges 317
Pheasants 317
Rabbits—none 319
Wild birds 305
May be varied in different counties 311
Common law, trespass at 133

COMMONS:
Commoners have no right of sporting on 323
Remedies of, when overstocked with rabbits 324
Right of sporting on, vested in Lord of Manor 323
Common of piscary 396

COMPENSATION FOR DAMAGE BY GAME:
At Common Law 337
Under express agreement 331, 335
Agricultural Holdings Act 59, 60, 336
By rabbits when recoverable at Common Law .. 326, 327
Conservators (*see* "Board of Conservators").
Constable (*see* "Police Constable").

COUNTY COUNCIL:
Application by, to Secretary of State for orders under Wild Birds Protection Acts 311
Application by, to Board of Agriculture to create fishery district 399
Excise licence duties now levied by 261
General powers in respect of 262
Council (*see* "County Council," "District Council").
Conies (*see* "Rabbits" and "Ground Game").

PAGE.

COURSING HARES:
Without leave 103
When not a trespass in pursuit of game 103
Licence not required for 266

CRIMINAL INTENT:
Not necessary to show to support conviction for trespass in pursuit or poaching 205

Crops, damage to (*see* "Compensation").

CROWN GRANTS OF:
Foreshores .. .. 35, *et seq.*
River beds 49, 50, 394

CURTILAGE OF HOUSE:
Definition of 276
Gun licence not required in 276

Decoys protected by Parliament 131

DAMAGE:
By dogs, when owner liable for 99, 105
By horses, ,, ,, ... 376
And *see* "Compensation" and "Malicious Damage."

Day, definition of, in Game Act.. 152
,, ,, Larceny Act (angling offences) 414

Dead game (*see* "Game").

Dealer in game (*see* "Game Dealer").

DEER:
Entering land with intent to hunt 345
In park or enclosed land 342, 343
Killing by trespasser on unenclosed land 346
Law applicable to 341
Licence to kill, when necessary 264, 266
Not included in definition of game 341
Penalties for killing or hunting in parks.. 343
Person in possession of, must show not unlawfully taken .. 344
Setting snares for 345
Poaching and a sequel 346
Property in, when killed 341, 346
Unlawful possession of carcase of, skin, etc. 345
Unlawfully taking, etc., in forest, chase or purlieu 343
Wild and tame, difference between, law as to 341

DEFINITION OF: PAGE.

A tidal river 158, 394
Curtilage 276
Claim of right 202
Common Law trespass 133
"Day" in game offences 152
Gun 280
Game under Game Act, 1831 2
,, under Poaching Prevention Act, 1862 187
Ground Game 3
High water mark 37
Low ,, ,, ... 38
Mens rea 204
"Night" in game offences 167
,, in unlawful angling 414
"Ordinary service" under Ground Game Act, 1880 67
Warren 324
Wildfowl under Wildfowl Preservation Act 55

Demand for production of licence (*see* under various headings of "Licence").

DITCHES (*see* "Boundary Fences").

DISTRICT COUNCIL:

Licences to deal in game granted by 282
Procedure before 282
Decision of, conclusive 282

DOGS:

Chasing game, whether killing of justifiable 106
Conveyance of by train (*see* "Dogs in the Train").
Cruelty to 107, 108
Coursing with 103
Damage by trespassing 99
Damage done in coursing with 103
Destruction of dangerous 109
Entitled to one bite, how far maxim true 100
Ill-treating of 107
Killing of, when justifiable 106
Laying poison for 111
Licence required for keeping 291

DOGS—*contd.* PAGE.
Liability of owner for damage done by 99, 105
None unless "scienter" proved, except for worrying cattle or sheep 105
Lord of Manor may seize trespassing 109, 321
Maliciously killing or injuring 107
Personal injuries by 99
Night poacher using 169, 171
Railway Company's liability for injury to (*see* "Dogs in the Train").
Setting traps for 110
Scienter of owner of 104
Sheep or cattle, injury to by 105
Spears for 110
Stray 109
Train, dogs in (*see* "Dogs in the Train").
Trespass by, when actionable 100
Using to assist in taking game may entail liability to game licence 264, 268
DOGS IN THE TRAIN:
Companies not insurers of 114
Conditions must be reasonable and be signed 115
Excessive insurance rates 116
Insurance on value 116
In passenger compartments 119
Liability of railway companies for 114
Liability when lost in transit 117
Liabilities when damaged in transit 118
Liability when accompanying owner 119
Sent at owner's risk 119
DOG SPEARS:
Setting of, not unlawful 110
Baits to tempt dogs to, when unlawful 110
Duck, wild (*see* "Wildfowl").
Duties (*see* "Licences").
EGGS:
Of game 193, 194
Celebrated Elsenham Case on .. .. 194, App.
For what purposes considered as game 186
Power of constable to search for .. .. 186, *et seq.*
Unlawful taking of game and certain wildfowl 193

EGGS—*contd.* PAGE.
Severity of magistrates in cases of 195
Typical hard case 196
When taking of is larceny 194, 233
Wild birds, protection of 312
Eviction of trespasser by force justifiable 135
EXEMPTIONS FROM:
Dog licences 291
Game licences 264
Gamekeepers' licences 270
Gun licences 277
EXCISE DUTIES:
Amounts of various (*see* under "Licences").
Now levied by County Councils 261
Exposing wild birds for sale during close time 305
Face-repairing, extraordinary 243
FALSE ADDRESS OR DESCRIPTION:
Trespasser in pursuit giving, may be arrested.. 180
Fences (*see* "Boundary Fences").
FIREARMS:
Night poacher using .. .. 167, 169, *et seq.*, 183
Seizure of 186
What are, under Gun Licence Act 280
FISH:
Destroying by poison, &c. 413
Taking unlawfully in private waters, penalties for 414
Close times for taking (*ses* "Close Times").
FISHERY DISTRICTS:
Application for formation of, by County Council 399
Alteration of 399
Close times in, table of 422
By provisional order 416
Conservators of (*see* "Board of Conservators").
Do not include artificial waters 400
Formation of, by Board of Agriculture and Fisheries .. 399
Licence duties in, table of 422
FISHING:
Acts governing 398
Inclosure award, rights under 396
Licenses for (*see* "Licences, rod and line").

FISHING—*contd.* PAGE.
Limit of time for proceedings for offences in respect of .. 416
Public rights of, when 50, 394
,, cannot be claimed by custom 396
Long usage will not give 396
None above average flow of tide 395
Nor in inland lake 395
Right of Commoners.. 396
Right of, granted by deed 397
Right of, in Crown waters 50, 394
Five or more persons jointly trespassing in pursuit 171
FLESH:
Placing poisoned 111
Highly scented, placing to tempt dogs 110
FOREIGN:
Game, licence required to deal in.. 184
,, no close time for selling 287
Wild birds, penalties under Wild Birds Act not applicable to 306
FORESHORE:
Crown's rights over 34, 48
Extends to *ordinary* high water mark only 37
May belong to private person 35
Public right of passage over 40, 41, 48
Public right of shooting over 49
FORFEITURE:
Of game licence 271
Game dealer's licence 287
Game, &c., seized under Poaching Prevention Act 187
Gun licence 281
Rod and tackle of angler 414
Wild birds unlawfully taken 306
Footpaths, trespassing on 26
Form of agreement for sporting rights 331
FOX HUNTING:
Constitutes common trespass unless with consent of occupier 5
Liability for damage done during 377
GAFF:
Districts where time for using is limited.. 422
Use of, may be prohibited by bye-law 404
When not to be used save as auxiliary to rod and line .. 406

GAME: PAGE.

Close times for (*see* "Close Times").
Damage by, to crops (*see* "Compensation").
Days on which, may not be killed (*see* "Close Times").
,, may not be kept for sale (*see* "Game Dealers").
Definition of .. ..
In Game Act, 1831 2
Poaching Prevention Act 186
Agricultural Holdings Act, 1908 62
Dealer in (*see* "Game Dealer").
Eggs of (*see* "Eggs").
Ground (*see* "Ground Game").
Hares (*see* "Hares").
Licence to kill (*see* this title).
Licensed dealer in, may only buy from person licensed to kill or deal in 285
No property in live 5
Person licensed to kill, may only sell to licensed dealer .. 284
Person not licensed dealer may only buy from licensed dealer 285
Poaching (*see* "Trespassing in Pursuit," and "Night Poaching").
Poison, laying for 320
Property in dead game usually in occupier of land or owner 6
Unless started on another person's land 6
When in trespasser 7
Reservation of, to landlord .. .. 1, 52, *et seq.*
Seizure of, from trespasser 6, 322
,, ,, under Poaching Prevention Act .. .. 186, *et seq.*
Shot and falling on neighbour's land, to whom belongs 6, 8, 9
Taking dead, when larceny .. .. 154, 211, *et seq.*
Trespassing in pursuit of (*see* this title).

GAME DEALER:

Close times for 286, 287, 298
Not applicable to foreign killed game 287
Dealing in live game .. .. 293, *et seq.*
Must be licensed (and *see* "Game Farmer") 282
Licences required by (*see* "Licence to deal in Game").
Passing off English partridge as foreign 288, 289
Must buy only of licensed dealer or person having game licence 285

GAME DEALER—*contd.* PAGE.

Must keep name board on shop 287

Game eggs (*see* "Eggs").

GAME FARMER:

How stands, in peril of law.. .. .. 293, *et seq.*

If licensed, cannot keep game in mew during close season 298, 299

If unlicensed, cannot sell live game 298, 304

Licence required (*see* "Licence to deal in game").

GAMEKEEPER:

Arrest of poacher by.. .. .. 183, *et seq.*

Licence to kill game required for (and *see* "Licence to Kill Game") 270

Licence for manservant required by 270

Of Lord of Manor, special powers of 321, 322

GRAIN:

Placing or sowing poisoned 320

Selling poisoned 320

GROUND GAME:

Acts of 1880 and 1906 .. .. 63, *et seq.*

Agreements limiting rights of occupier void, except certain agreements as to moorlands 64, 65, 83, 85, 87

Are hares and rabbits 3

Attempt to avoid the Acts as to .. .. 78, *et seq.*

Authority to kill, to whom occupier may give 65

,, Production of on demand .. 65, 70, *et seq.*

Authority by owner to demand occupier's authority, must it be produced 73

Belongs to occupier when killed by him 75

Concurrent rights to, under the Acts 65, 85

Conditions for exercising rights 65

Firearms, when and by whom may be used to kill ..65, 66, 85, 86

Game licence not required to shoot or to sell hares when killed 92, 186

Gun licence when required to shoot 93

Hares can only be sold to licensed dealer 75, 284

Market gardeners' rights to kill 87

May not be taken with spring traps except in rabbit holes .. 66, 85

Member of occupier's household resident on land may be authorized to kill, who is 65, 66

Moorlands—right to take on 66,

GROUND GAME—*contd.* PAGE.

Occupier and one other person only may use firearms, and in day-time only 65

Open lands—right to take on .. .. .. 66, 87, *et seq.*

Owner occupying, how far subject to provisions of the Acts.. 85

Person *bona-fide* employed for reward to kill 65, 68, 69

Person in ordinary service on the land may be authorised to kill, who is 65, 67

Right of occupier to kill when game reserved 65, 84

Traps not to be used except in rabbit holes 66

,, may be used by occupying owner.. 85

,, ,, ,, shooting tenant 87

Warrens or breeding grounds, unlawfully taking in .. 324, 325

GROUSE:

Close time for 317

Included in definition of game 2

Gun Licence (*see* "Licence to carry a Gun").

GUN:

Night poacher using .. .. 167, 169, *et seq.*

Seizure of, by constable 186

,, ,, gamekeeper in manor 321

When may be forfeited 187

HARES:

Coursing, when not trespassing in pursuit of game 103

Close time for selling 287

Included in game 2

Killing on Sundays or Christmas Day 317

Licence to kill game when not required for 92, 266

May be sold by occupier without game licence.. 286

Night poaching of (*see* "Night Poaching").

Occupiers' right to, under Ground Game Act, 1880 (*see* "Ground Game").

To whom belong when killed, coursing 7

Trespass in pursuit of (*see* this title).

Warrens, unlawfully taking in 324, 325

HEATH GAME (*see* "Grouse").

HIGHWAY:

In whom soil of usually vested 26, 159

Night poaching on .. .. 168, *et seq.*

Trespass in pursuit on 153, 163

HIRE OF SPORTING RIGHTS (and *see* "Lease"). PAGE.
Effect of agreement for not under seal 2, 330
,, ,, Verbal letting of 2, 330
Form of agreement 331
,, clauses of discussed 333
Should be by deed 2, 332
Stamp on lease or agreement 332
HOOK:
Penalty for taking or attempting to take birds with 314
HORSES:
Agreement for hire or exchange may be verbal 365
Agreement for sale of 364
Must be in writing if £10 in value 364
Unless actual delivery and acceptance of horse 364
Or earnest money paid.. .. .. 364, 365
Shaking hands on bargain of no effect 365
Borrower of 371
Liability of 371
Damage done by 376
When owner liable for 376
Hire of 370
Implied warranty on sale of 369
Liability of hirer for accident to horse 370
,, ,, injury to third parties 370, 371
Innkeepers' rights and liabilities in respect of guests—
Are insurers 373
Liability of, for 373
Lien on, general for all guests' expense 374
May sell horse if not discharged 374
Lien on—
Agister has not 372
Breaker has 371
Confers no right to sell.. 271
Except in case of innkeepers 274
For services of stallion 372
General, innkeepers only have 373
Livery-stable keeper usually none 372
Special nature of 371
Who may have .. .. 371, *et seq.*
What is 371

HORSES—*contd.* PAGE.
Sale in market overt 365
Warranty of—
Must be at time of sale.. 367
Remedy for breach of 369
Unsoundness, what is 367, 368
Vice, what is 368

INFORMATION—TIME FOR LAYING:
In case of offences under Game Act, 1831 160
Under Night Poaching Act 173
Taking hares and rabbits in warrens 173
Under Fishery Acts 416
Unlawful angling 416

INNKEEPERS:
Lien of—
On horses of guests 273
Confers right to sell in case of non-payment 274
Extends to whole of guest's bill 274

INTERVIEWS WITH CLIENTS:
Compromising the prosecution of an amateur deerstalker .. 346
How Patrick O'Leary legally shot a lurcher 111
Mr. Upperton's troubles and boundary fence rights 15
Mr. Prowler's fracas upon the sea shore, involving the law on foreshores, manorial rights and tidal limits 28
Mr. Prowler's second fracas 44
Mr. Cunningman's two agreements wherein the landlord reserves shooting 52
Mr. Stubbles and the Ground Game Act, with questions on authorizations thereunder 70
Mr. Cunningman's rights to his landlord's rooks 121
Proving an alibi 234
Sir John Rocketter's agreement to avoid the Ground Game Act.. 78
The athlete and the excise officer 272
,, difficulties and liabilities of a rabbit farmer 326
,, mystery of Deepdale Manor 137
,, wager of Mr. Strawless regarding Gun Licences.. .. 91
Timothy Tattler's misuser of the highway to disturb partridge driving 23

INTERVIEWS WITH CLIENTS—*contd.* PAGE.

Turning the tables upon Squire Broadacres and Mr. Six-and-Eight 211

Unlawful possession of live game at the "World's Aviaries of Mr. Joseph Cockley" 293

Wandering Will's trespass in pursuit of game on the highway 160

Isis—(*see* "Thames") .. ..

JUSTICES:

Jurisdiction of.. 202

Ousted by claim of right (and *see* "Claim of Right").. .. 202

KILLING:

Game during close time 317

Without licence 269

Hares and rabbits, when no licence required for .. 266, 264

Wild birds during close time .. .. 305, *et seq.*

LANDLORD:

Reservation of game to .. .. 53, *et seq.*, 58

May be verbal on verbal letting 2

Of wildfowl to.. .. .. 53, *et seq.*

Rights when game reserved 58

When wildfowl reserved 53

LANDRAIL:

Licence to kill required 264

Trespass in pursuit of (*see* this title).

LARCENY:

Dead game may be subject of .. .. .. 154, 211, *et seq.*

But not if killing and taking are continuous acts 153

Eggs not subject of 194

,, ,, unless reduced into possession 194

Live game not subject of .. .. 194, 211, *et seq.*

,, ,, ,, unless reduced into possession .. 194, 211, *et seq.*

Of deer 111

Of hares and rabbits in warren or breeding ground 324

LEASE:

Of land, reservation of game in 58

Of rights of fishing 397

Of sporting rights 329

Arbitration under 338

LEASE—*contd.* PAGE.

Compensation for damage under 335, 337
Form of 332
Must be under seal 2, 329, 330
Provision in, for netting in coverts under 340
,, for overstocking with game or rabbits 332, 335
Rights of entry under 334
Should include keeper's cottage and rearing grounds .. 339
Stamps required for 333
What is meant by "shooting and sporting" in 333
When binding, if verbal 2, 330, 397

LICENCES:

Excise penalties can only be enforced by County Councils .. 262
Dog (*see* under "Dog").
Game (*see* "Licence to Kill Game").
Game dealers (*see* "Licence to Deal in Game").
Gun (*see* "Licence to carry a Gun").
Generally 261
Police authorised to demand production of 262
Charged with prosecution of 262
Offences in respect of 262, 263
Now under control of County Councils 261
Not obtainable at Inland Revenue Offices 261
Obtainable at Post Offices 262
,, sometimes at County Council Offices 262

LICENCES (ROD AND LINE):

Are required in private as well as public waters 405
For salmon, trout and char 405, 422
For salmon—covers trout and char 405
May be fixed by Conservators 403, 405
,, subject to statutory limits 405
,, for season or part of season 405
Only available in district in which issued 405
Penalties for taking fish without 406
Production of, on demand 407
Table of, in various districts 422
Licence for other freshwater fish may be issued in provisional order districts 418

LICENCE TO CARRY A GUN: PAGE.
Cost of 276
Duration of 276
Forfeited by conviction for trespass in pursuit.. 281
Inspection of may be demanded by police constable or authorized officer of County Council 279
Not required in dwelling-house or its curtilage.. 276
Parts of gun, when required for 279
Obtained at Post Office 276
Penalty for not having 278
For refusing name and address when not produced on demand 279
Persons exempt from 277
Revolver, required for 280
Toy pistol, ,, ... 280
When required for scaring birds or killing vermin 277

LICENCE TO DEAL IN GAME (and *see* "Game Dealer").
Beer retailer, not granted to 283
Carrier, not granted to 283
Council's (Urban or Rural District) Licence 282
Duration of 284
Exemption of innkeepers when selling game for consumption 284
Excise licence—
Cost of 282
Obtained at Post Office 282
Extends to one house, etc., only 283
Existing evils under .. .. 288, *et seq.*
Forfeited on conviction under Game Act, 1831.. 287
For what required 282
Foreign game 284
Live game, etc. 299
Not for rabbits, etc. 282
Hawker, not granted to 283
Innkeeper, not granted to 283
Holder of grocer's license debarred from 283
Local Authority's licence 282
Name board must be put up by holder of 287
Not transferable 284
Partners require only one 283
Penalties for infringing law as to .. .. 284, *et seq.*

LICENCE TO DEAL IN GAME—*contd.* PAGE.

Prohibited times under 286
Purchase of game by holder of 285
,, only from person holding game licence or other licensed dealer 285
To what place extends 283
When licence forfeited 287
Who grants 282
Who can hold 283
Who is debarred from holding 283

Licence to keep dog (*see* under "Dog").

LICENCE TO KILL GAME:

Cost of 264
Date from time of granting.. 267
Duration of 264
For what required 264
Forfeited by conviction under Game Act, 1831.. 271
Gamekeeper's licence—
Only authorizes killing game on employer's shoot 264, 270, 271
Ceases when keepers quit service 270
May be transferred 270
Inspection of may be demanded by police constable 271
By Lord of Manor or his gamekeeper 271
By other licensed person 271
By owner or occupier of land.. 271
Not required by occupier of land to kill hares 92, 266
Not required to course hares 266
Not required to take woodcock or snipe in snares 266
Obtained from Post Office 264
Penalties for killing game, etc., without.. 269
,, selling ,, ,, ... 284
For refusing to give name and address 271
When licence not produced on demand 272
Rabbits, when required to kill 264
Required for searching for game and for setting snares (except for snipe or woodcock) 267, 266
Required by persons assisting with own dogs on taking of 264, 267
Trespasser killing rabbits without is liable to prosecution .. 265
Who requires 264

Light may not be used to attract salmon, trout or char 412

LINCOLNSHIRE: PAGE.
Taking rabbits on sea and river banks in 325
Live game (*see* "Game" and "Game Farmer").
Magistrates (*see* "Justices").
Malicious damage (*see* "Trespass").
Man traps and spring guns 136
MANORS:
Rights of Lords of, within, to seize dogs, nets, &c. .. 109, 321
,, to arrest night poachers 183, 322
,, to demand inspection of game licences 271, 322
,, to seize game unlawfully taken 322
Liability for overstocking commons with rabbits 323
Lord of, not liable for prosecution for trespass in pursuit .. 322
Reservation of rights of sporting or fishing on inclosure of lands of 322, 396
Wastes of, vested in Lord 321
MEAL, POISONED:
Penalty for laying 320
Mens rea (*see* "Criminal Intent").
Moor Game (*See* "Grouse").
NAME AND ADDRESS: Refusal to give by:
Person failing to produce game licence on demand 272
,, ,, gun ,, ,, ... 279
Trespasser in pursuit 180
NET:
Night poacher using.. .. .. 167, *et seq.*
Setting on Sunday or Christmas Day 318
When may be forfeited .. .. 187, *et seq.*, 311
,, seized .. .. 186, *et seq.*
NIGHT:
Arrest of offenders at (*see* "Arrest").
Definition of (Night Poaching) 167
,, (Unlawful Angling) 414
Ground game may not be shot by.. .. .. ..65, 66, 85, 86
Taking fish by.. .. .. 412, 414
Poaching (*see* next title).
NIGHT POACHING:
Arrest of person discovered when warranted 184
By whom may be effected 183, 184

NIGHT POACHING—*contd.* PAGE.

By three or more, armed 171
Compared with trespass in pursuit of game 171
Costs of prosecution for, when indictable misdemeanour .. 173
Defined 167
Dogs, using to chase rabbits does not constitute offence of .. 169
In warrens or breeding grounds 324
On enclosed land 167, 168
Offence committed by entering with gun, etc., for purpose of taking game or actually taking rabbits on 170
On highway or open land 168
No offence unless game or rabbit actually taken 170
On waste land.. 171
Penalties for 167
In warrens 325
When three or more together armed 171
When violence offered to person apprehending 168
Prosecution for must be commenced within six months .. 173
Save in case of indictable misdemeanour 173
Time when offence can be committed 167
Norfolk and Suffolk—Special Act governing fishing in .. 398, 420
Otter lathe or jack may not be used to attract salmon, trout or char 412

OCCUPIER:

Arrest of offender by (*see* "Arrest").
Ground game, right to kill (*see* "Ground Game").
Hares, right to kill without game licence 92, 266
May demand trespasser's licence 271
;, ,, ,, name 180
May seize game taken by trespasser 6
Prima facie right of, to take game and other animals .. 3

PARTRIDGES:

Close time for 317
Included in definition of game 2

PHEASANTS:

Close time for 317
Included in definition of game 2

POACHERS (and *see* "Night Poaching")—

How to deal with 174

POACHING: PAGE.
By day (*see* "Trespass in pursuit of game").
By night (*see* "Night Poaching").
Eggs (*see* this title).
A hard case 196
POISON:
Penalty for placing on ground where game resort 319
Using to destroy fish.. 413
(And *see* two next titles)
POISONED FLESH:
Penalty for placing or laying on land 110
POISONED GRAIN OR MEAL:
Penalty for putting or sowing on or in ground 320
Selling 320
POLICE CONSTABLE:
Arrest by, under Poaching Prevention Act .. .. 186, *et seq.*
Power to demand production of gun licence 279
,, ,, game licence 271
Powers of Inland Revenue Officer transferred to 262
Procedure when suspected person arrested 186, 190
Search by, of person suspected of having game, etc., unlawfully taken 186
When bound to prosecute 190
Prescription will not avail to confer right on public 396
PRIVATE FISHERY:
May exist in public waters 394
Return to Board of Agriculture of fish taken in provisional order district 418
Production of licence, *see* under titles of various licences .. ..
PROPERTY IN:
Dead game 6
Deer 341, 342
Eggs 194
Foreshores 34, 50
Game under Ground Game Act, 1880 .. .. 6, 7
,, taken by trespasser 6, 7
Hares taken when coursing 7
Highways 29, 159
Live game 5
Tidal river bed 50, 394

PROVISIONAL ORDER: PAGE.
Creation of fishery districts by 416
Must be confirmed by Act of Parliament 416
Provisions in Usk and Wye District 416, 417
Public cannot gain right to fish by prescription 396
PUBLIC WATERS:
Extend to average flow of high tide .. .. 34, 50, *et seq.*, 394
Fishing rights in 394, 395
May be vested in private person by ancient crown grant .. 394
QUAIL:
Licence to kill required 264
Trespassing in pursuit of (*see* this title).
RABBITS:
Commons right to on 322
,, overstocking with 323
Game licence not required to kill except by trespasser .. 264
Gun licence, when required to kill 94, 95, 277
Included in ground game (and *see* this title).
Liability for escape of, from rabbit farm.. .. .. 326, 327
Night poaching of (*see* "Night Poaching").
Not included in "game" 2
Trespass in pursuit of (*see* this title).
Warrens, unlawfully taking in 324, 325
,, overstocking with 325
RACES:
Governed by rules under which run 377
Stewards at, powers of—
Cannot waive conditions of 379
May act notwithstanding interest 378
Stakes at, winners' right to recover—
Owners right to recover for disqualified horse 379
Right to recover.. .. .. 379, 380
Wager on, (*see* "Wager").
RATING OF SPORTING RIGHTS:
Appeal from decision of assessment Committee 362
Basis of rating.. 360
Effect of Agricultural Rates Act when rights reserved to landlord 353
Of Public Health Act 354

RATING OF SPORTING RIGHTS—*contd.* PAGE.
Gross estimated rental 360
Rateable Value—
Deductions allowed to arrive at 361
Who to be rated for 351
When severed from land 352
When not severed 351
Woods and plantations—
How value estimated 358
Rating of private salmon and trout fisheries in provisional order districts 417
Red game (*see* "Grouse").
RESERVATION OF SPORTING RIGHTS:
Cannot defeat right of occupier to take ground game 65, 84
Interview on 52
What included in game 55
What included in wildfowl 54, 55
Road (*see* "Highway").
Roe, penalty for fishing with 412
ROOKS:
An old Act to destroy 129
Parliamentary reward for killing 129
Right to shoot .. .. 123, *et seq.*
Unlawfully driving away .. .. 124, *et seq.*
SALE OF GAME:
Licensed dealer alone may sell to public 285
Person having game licence may sell to licensed dealer only 284
Person not having licence may not sell, except occupier entitled to ground game 285, 286
SALMON, TROUT AND CHAR:
Close times for (*see* "Close Times")
Licences for taking with rod and line (*see* "Licences, rod and line").
Roe of, penalty for buying, selling, etc. 412
Taking of, otherwise than with licensed instrument 406
Unclean, penalty for taking, etc. 412
Using light for taking 412
Otter lathe or jack for 412, 413
Gaff for 412
Search for fish illegally taken, power of Water Bailiff to .. 404

SEARCH FOR GAME UNLAWFULLY TAKEN: PAGE.
Power of police to search suspected poachers 186, 189
Power to seize after 186, 189
Under manorial authorization 321
When and where police may 188, 189
SEIZURE of fish unlawfully taken 404
Of fishing tackle.. 414
Of game unlawfully taken by trespasser 6, 186, 322
Of gun, etc., found on search under Poaching Prevention Act 186
Of gun, etc., by Lord of Manor 322

SEVERAL FISHERY:
Close time for angling for salmon, trout and char in 405
None for coarse fish 409
Meaning of 395

SNARES:
Are "engines" within Game Act, 1831 318
Must not be kept set for hares, Sunday or Christmas Day 317, 318
Night poacher using .. .. 170, *et seq.*
Using by unlicensed person 264, 266
When may be forfeited if used for taking game 187
" " " " wild birds 306

SNIPE:
Close time for (*see* "Wild Birds").
Licence to kill required 264
" except for taking in snares 266
Trespass in pursuit of (*see* this title).

SPORTING RIGHTS:
Agreement to let should be under seal 1, 330, 332
Assignment of.. 1
Can only be granted by deed 2
Effect of verbal letting of 2, 330
Form of agreement for letting 331
Popular fallacy concerning fox-hunters' 4
Reservation of, on verbal letting of land.. 1
Rating of (*see* "Rating," etc.).
Shore shooters' 34, 47
Spring guns, penalty for setting 136

SPRING TRAPS: PAGE.
For rabbits may only be set by occupier in rabbit holes .. 66
Thames and Isis, special Act governing 398, 420
Tickling trout, illegal where licences in force 406, 407
Time for commencing proceedings (*see* "Information").

TRAPS:
(*See* "Man Traps and Spring Traps").
Penalty for setting in trees, &c., for wild birds.. 314

TRESPASS AT COMMON LAW:
By dog's entry 133
Civil action for 133, 134
Entry of shot a 133
How to deal with trespassers .. .. 135, 136, 174, *et seq.*
Impossible on own occupation 56
No action for injuries accidentally received during 136
,, ,, unless from man-traps or spring guns 136, 137
No right to prosecute for, unless damage done.. 134
Possibility of, on sea-shore 40, 41, 48
To pick wild flowers 134
Tricks to catch trespassers 136

TRESPASS IN PURSUIT OF GAME IN DAYTIME:
Compared with night poaching 171
Entry of shot does not constitute.. .. .. .. 152, 153
Essentials necessary for a conviction for 152
Exemption from of Lords of manors 322
Generally .. .. 152, *et seq.*
In warrens, etc. 324, 325
Killing by day and picking up by night no offence .. 155, 156
Killing and taking one continuous act 153
Larceny as distinguished from .. .. .. 154, 211, *et seq.*
Not necessarily with intent to kill at the time 156
Not committed by taking dead game 154
Unless trespasser intended to take at time of killing .. 154, 155
Occupier's leave no defence if game reserved 56, 57
On highways 153, 163
On tidal rivers.. .. .. 157, 158
Personal entry required 152, 153
Penalty for 152

TRESPASS IN PURSUIT OF GAME IN DAYTIME—*contd.* PAGE.
Prosecution must be commenced within three months .. 160
Sending dog to search, if can be committed by 153, 160, *et seq.*
Search for game, etc., suspected to have been taken by 186, *et seq.*
Seizure of game recently taken by .. .. 186, *et seq.*, 321
Time when can be committed 152
What constitutes .. .. 152, *et seq.*
Trout (*see* "Salmon, trout and char").

WAGER—
Agent making, cannot recover from principal 383
Right of principal against 383
Cheques, etc., given for lost, who can recover on 388
Not recoverable 380
Unless new and valuation consideration given for 386, 387
Promise to pay money paid in respect of void 381
Soliciting by circular, etc., infants to make 389
When amount staked may be recovered 381, 382

WATER BAILIFFS:
Appointment of 403
Powers of—
To enter on land 404
To inspect licences 404
To search 404
To seize fish, &c. 404

WARRENS—
Definition of, in Larceny Act 324
No action against owner for keeping rabbits in .. .. 325, *et seq.*
Overstocking commoners' remedies against lord of manor for 324
Penalty for taking rabbits or hares in 324, 325

WILD BIRDS:
Close time for, under Wild Birds Protection Act .. 305, 306
May be varied in different localities 311
Absurdity of result 312
Difficulty of enforcing Acts protecting 308
Forfeiture of birds unlawfully taken 306
Penalties for taking, etc., during close times 305, 306
Suggestion for improvement of Acts 313

WILD BIRDS—*contd.* PAGE.

Eggs of—

Forfeiture if unlawfully taken 311, 312

Power to make orders protecting 312

Penalty for setting traps for, on trees 314

Penalty for taking with hooks 314

Schedule of, in protection Acts 314

May be varied by local order 311

Wildfowl, definition of 55

WOODCOCK :

Close time for (*see* "Wild Birds").

Licence required to kill 264

,, except for taking in snares 266

Trespass in pursuit of (*see* this title).

PRINTED BY
A. C. FOWLER, 6, TENTER STREET, MOORFIELDS.
1910.

UC SOUTHERN REGIONAL LIBRARY FACILITY
A 000 688 291 4